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RERUM BRITANNICARUM MEDII ÆVI  
SCRIPTORES,  
OR  
CHRONICLES AND MEMORIALS OF GREAT BRITAIN  
AND IRELAND  
DURING  
THE MIDDLE AGES.



**THE CHRONICLES AND MEMORIALS**  
**OF**  
**GREAT BRITAIN AND IRELAND**  
**DURING THE MIDDLE AGES.**

PUBLISHED BY THE AUTHORITY OF HER MAJESTY'S TREASURY, UNDER  
THE DIRECTION OF THE MASTER OF THE ROLLS.

---

ON the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an *Editio Princeps*; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.

The works to be published in octavo, separately, as they were finished; the whole responsibility of the task resting upon the editors, who were to be chosen by the Master of the Rolls with the sanction of the Treasury.

The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

*Rolls House,*  
*December 1857.*

**Dear Books**

**OF THE REIGN OF**

**KING EDWARD THE THIRD.**

**YEAR XV.**



**Dear Books**  
OF THE REIGN OF  
**KING EDWARD THE THIRD.**  
**YEAR XV.**

EDITED AND TRANSLATED

BY

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## CONTENTS.

	Page
<b>INTRODUCTION:—</b>	
The plan adopted . . . . .	xi
The MSS. used . . . . .	xi
<hr/>	
Social history: traffic in relics . . . . .	xi
An esquire's life as pensioner in a monastery . . . . .	xii
Food and clothing of the poor . . . . .	xiii
Payments in church: brawls in Westminster Hall . . . . .	xiii
The early history of the Priory of Hayling, illustrated . . . . .	xiii
<hr/>	
<i>Hospites</i> . Villein tenure . . . . .	xiv
Avowry for <i>Merchet</i> . . . . .	xv
Historical importance of <i>Merchet</i> in relation to Villenage and the History of the People . . . . .	xv
Fables and speculations on the subject, intermixed with facts . . . . .	xv
The custom of Borough English gravely traced to <i>Merchet</i> . . . . .	xvii
The diffusion of <i>Merchet</i> , and the use of the word, from Scotland to Hampshire, shown in records . . . . .	xviii
It was essentially a villein service, though not necessarily implying that the person rendering it was of the condition of a villein . . . . .	xx
Unsuccessful attempt to infer servile condition as well as servile tenure from the payment of <i>Merchet</i> in the reign of Edward III. . . . .	xxii
<i>Merchet</i> in the reign of Henry VI. . . . .	xxv
<i>Merchet</i> as it appears in Court Rolls . . . . .	xxvi
<i>Merchet</i> not to be confounded with <i>Leirwite</i> or with <i>Adulterium</i> . . . . .	xxvi
The word <i>Merchet</i> not found (in the sense of a fine) in the ancient Laws of Wales or Ireland . . . . .	xxviii
The payment most nearly approaching to <i>Merchet</i> in the Welsh Laws is usually called <i>Amobyrr</i> . . . . .	xxix
Confusion arising from the translation of the Welsh <i>Amobyrr</i> by the Latin <i>Merces</i> . . . . .	xxx

	Page
The case for the derivation of <i>Merchet</i> from the Welsh or Cymric <i>Merch</i> (a maid or daughter) -	xxx
Its bearing on history - - - -	xxxi
The <i>a priori</i> objections - - - -	xxxii
The graver objections founded on ascertained facts <i>Merchet</i> shown to be the ransom, not of daughters and sisters only, but of sons also - - -	xxxii xxxiii
Fine for marriage outside the vill or lord's terri- tory called <i>Merchet</i> - - - -	xxxiv
<i>Foris-maritagium</i> , <i>For-mariage</i> , <i>Four-mariage</i> , on the continent - - - -	xxxv
Suggested interpretation of <i>Merchet</i> or <i>Marchet</i> in relation to <i>Foris-maritagium</i> and the <i>Mearc</i> , <i>Mark</i> , or boundary - - - -	xxxv
Evidence of the use of the word <i>Marcha</i> in the sense of a border-fine or tax - - - -	xxxvi
This interpretation of <i>Marchet</i> or <i>Merchet</i> is in harmony with a large class of the facts - -	xxxvii
A fine for marriages beyond the border might easily have been extended to marriages within the border - - - -	xxxviii
Traces of the change - - - -	xxxix
The fine, at the lord's will, for marriage beyond the border, is a surer sign of villenage than a fixed payment for marriage in general - - -	xl
Recapitulation: inadmissibility of various theories as to <i>Merchet</i> - - - -	xli
The hypothesis now proposed is only tentative -	xlii
<hr/>	
On a passage in the Introduction to the volume next preceding: Bishops and Treason - - -	xliii

# CONTENTS.

vii

	Page
TABLE OF CASES IN THE PRESENT VOLUME - - -	xlvi
TABLE OF REFERENCES TO THE LIBER ASSISARUM - -	xliv
TABLE OF REFERENCES TO FITZHERBERT'S ABRIDGMENT -	1
THE CHANCELLORS, JUSTICES OF THE TWO BENCHES, TREASURERS, AND BARONS OF THE EXCHEQUER DURING THE PERIOD OF THE REPORTS - - - -	lii
CORRECTIONS - - - - -	lv
REPORTS OF CASES IN EASTER TERM 15 EDWARD III. -	2
REPORTS OF CASES IN TRINITY TERM 15 EDWARD III. -	172
REPORTS OF CASES IN MICHAELMAS TERM 15 EDWARD III. -	290
APPENDIX A. - - - - -	475
APPENDIX B. - - - - -	482
INDEX OF MATTERS - - - - -	489
INDEX OF PERSONS AND PLACES - - - - -	517

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## INTRODUCTION.

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## INTRODUCTION.

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THE plan on which the four preceding volumes were edited has been followed in this, but with an addition which, it is hoped, will be considered an improvement. As before, the parallel passages in the *Liber Assisarum* and in Fitzherbert's *Abridgment* have been traced and noted, and the Rolls have been searched for the records corresponding with the reports. The addition which has been made is that of reference-numbers at the head of every page, by means of which the cases may be more readily found.<sup>1</sup>

The plan  
adopted.

The MSS. which have been used for the text of the present volume are the Temple MS., the Lincoln's Inn MS., the Harleian MS. No. 741, and the Additional MSS. in the British Museum, numbered 16,560, and 25,184. The last mentioned MS., however, not containing any reports as of the 15th year of the reign of Edward III., has been used only for collation of a case (No. 45 of Easter Term) which was commenced in that year but concluded in the 17th year. The MS. 16,560 contains no cases of the year except those of Michaelmas Term.

The MSS.  
used.

The cases in the present volume, as illustrated by their corresponding records, abound with information touching

Social  
history:  
traffic in  
relics.

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<sup>1</sup> The addition has been made in deference to a suggestion in *The Nation* (New York), Vol. xlvii.,

No. 1214, p. 278, in relation to the Vol. of Y. B., 14 Edw. III.



social life in England. Mercantile transactions are at this period best shown in actions of Account. Among them is one in which the plaintiff, as usual, alleged that he had entrusted money to the defendant "ad mercandizandum." When the defendant was compelled to render an account, he included among the goods bought for the plaintiff various jewels, and two crystal phials full of precious relics.<sup>1</sup> Issue was joined as to whether the plaintiff had received them. Hence it appears that there was a recognised traffic in relics, and that, if a purchaser displayed a pious wish to serve God by cherishing the tears or the blood of a saint, he could find a vendor equally ready to serve Mammon by accepting a consideration for the merchandise.

An esquire's life as pensioner in a monastery.

Should anyone desire to know what was regarded as fitting sustenance for an officer of the King's Wardrobe, or other person of the rank of esquire, in whose support the King was interested, the details can be found. The most usual form of pension was that of a corody in a monastery, and the full particulars of a corody claimed are set forth in the record. They include a suitable apartment or chamber (*camera*) for the pensioner, and stabling for two horses, six loaves of one kind and three loaves of another kind daily throughout the year, with six flagons of monastery ale, and two monastery dishes of porridge. On every flesh-day there were to be two monastery dishes of meat, and on every fish-day two monastery dishes of fish, apparently for the mid-day meal. On every flesh-day there were to be also two monastery dishes of meat for the evening meal, dinner, or supper (*cæna*), and on every fish-day (unless the pensioner happened to be fasting) two monastery dishes of fish. Every day there were to be allowed six wax candles for the pensioner's apartment. There were also to be allowed a basket of oats daily, and

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<sup>1</sup> T., 15 Edw. 3, No. 41, p. 261.

twelve loads of hay yearly, for his two horses. He was to have yearly six loads of straw for his apartment, and twelve loads of wood (*busce*) for fuel. He was also to have every year one robe of the suit of the Prior's esquires for himself, and one robe of the suit of the Prior's grooms for his groom, as well as twenty shillings for shoes and other necessaries.<sup>1</sup> The Prior, it is true, denied the King's right to exact these demands; but that fact does not in any way affect the statement as to the requirements of an esquire, and the illustration which it affords of the mode of life at the period.

With the sustenance fitting for an esquire we are afforded the means of comparing the sustenance fitting for the poor. An action of *Cessavit* was brought against the Abbot of Creak in respect of certain services, among which was that of supporting five poor persons at a particular place. He had to find for each of them one loaf of the weight of fifty *solidi* every day, with porridge and ale, and a dish of meat, or fish, or other food, according to the day, between two of them, and half a dish to the fifth. Each of them was to have also a cloth tunic suitable to his condition every other year.<sup>2</sup>

In an action of Debt, brought against a clergyman, it was alleged that he had bound himself to pay to the plaintiff 1,000*l.* in St. Paul's Church, London.<sup>3</sup> Mention is made in another case of a brawl in Westminster Hall. "And note that John Burgeys was struck in that brawl and afterwards died thereof. May God assoil him. Amen."<sup>4</sup>

The reports, and associated records also, while they illustrate contemporary life and manners, not unfrequently throw light on previous ages. Thus, in relation to a corody claimed by the King of the Prior of Hayling, the history of the Priory from the time of William the Conqueror is unfolded. The Conqueror's charter granting

Food and clothing of the poor.

Payments in church: brawls in Westminster Hall.

The early history of the priory of Hayling illustrated.

<sup>1</sup> M. 15, Edw. 3, No. 32. Nothing is said as to linen.

<sup>2</sup> M. 15, Edw. 3, No. 71.

<sup>3</sup> M. 15, No. 15.

<sup>4</sup> T. 15, No. 47 (p. 274).

certain churches to the Abbey of Jumièges is cited *in extenso*. The charter of Henry I. is also cited, in which the King gave to the same Abbey the Island of Hayling, and lands elsewhere, with their "*hospites*." We are told how the island was known as *Harengeye* as late as the reign of Henry I., but was commonly called *Haillying* in the reign of Edward III. Finally, we have the certificate of the Bishop of Winchester. He certified that the church of Hayling had been appropriated, "*auctoritate Apostolica*," to the Abbey of Jumièges, and that a perpetual vicarage had been ordained therein, to which the Abbot and Convent or their procurators in England, in their name, presented a secular clerk, who, after being admitted and instituted as perpetual vicar, would undertake spiritual and archidiaconal charges. After a careful search of his registers, and those of his predecessors, however, the Bishop could not find that any Prior of Hayling for the time being, or the existing Prior, who was the procurator of the Abbot and Convent of Jumièges, was ever presented by a Bishop of Winchester to the Priory, by reason of the church of Hayling or of any spiritualities in the diocese of Winchester, or ever instituted in the Priory, or deprived. The contention of the Prior of Hayling that he was not "*perpetuus*" but "*dativus*," and that he was removable at the will of the Abbot of Jumièges was thus sustained.<sup>1</sup>

*Hospites.*  
Villein  
tenure.

The use of the word "*hospites*" in the cited charter of Henry I. is suggestive of a wide field of enquiry, which is, perhaps, hardly relevant to the reports in the present volume. Whatever may have been the condition of the *hospites*, however, the occurrence of the term in English charters, as well as in Domesday Book,<sup>2</sup> and in the Burgundian Laws<sup>3</sup> and elsewhere, may be of interest

<sup>1</sup> M. 15, No. 7.

<sup>2</sup> Vol. 1 (as printed), p. 184 b (Herefordshire), p. 259 and p. 259 b (Salop), and p. 264 (Cheshire).

<sup>3</sup> Ed. Pertz, *Mon. Germ. Hist., Legum Tom. iii.*, pp. 538, 558, 568 (*Liber Legum Gundebati*, xii., liv. 1, lv. 1, 2, lxxxiv. 2).

to future students of our early history. In the meantime some problems of villein tenure are continually obtruding themselves in the Year Books.

In Michaelmas Term occurs a case<sup>1</sup> in which the defendant in Replevin avowed for "*Merchet*." *Merchet* is in the record defined to be, in this particular instance, a service, thus:—"videlicet cum aliqua filiarum vel sororum suarum [i.e. of the tenant] desponsata vel fornicata fuerit, solvendi domino quinque solidos et quatuor denarios." Avowry for *Merchet*.

In England the payment of *Merchet* was, as will appear below, an unfailing indication of tenure in villenage. It was, in fact, the one certain mark by which tenure in villenage could always be recognised. *Laff* holden in villenage was holden at first by persons of unfree condition, and always by persons who, whatever their condition, performed villein services. The early history of villenage in England, if written, would constitute the greater part of the history of the people of England; it would show the condition in which the greater part of the population had to live, and might not improbably throw some light on their origin. An enquiry as to the meaning of *Merchet*, and its diffusion throughout the country, may, therefore, not only serve to illustrate the particular case reported, but also be of some historical importance. Historical importance of *Merchet* in relation to Villenage and the History of the People.

The subject has had some fascination for authors of past generations. It has served as the basis of a historical fable; it has called forth the denunciations of moralists; it has exercised the ingenuity of etymologists; and it has elicited some learned *dicta* from lawyers. Perhaps some of the speculations to which it has given rise may deserve a passing notice before an attempt is made to prove by authentic records what *Merchet* really was. Fables and speculations on the subject, intermixed with facts.

There is a story that a wicked, and it is to be hoped an imaginary, King Evenus established in Scotland an abominable law, identical with that which the French

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<sup>1</sup> No. 25.

have (apparently without better reason) sometimes called the *droit du seigneur*. To Malcolm III. has been attributed the honour of revoking the decree of Evenus.<sup>1</sup> Whatever Malcolm III. may have done, however, he cannot have abolished *Merchet*. *Marcheta mulierum* constitutes a prominent feature in the *Regium Majestatem*;<sup>2</sup> and, be the origin of that work what it may, there is hardly a possibility that this *Marcheta* could therein have been engrafted upon the treatise which bears the name of Glanvill had there been no such institution in North Britain. In the year 1492 it appears in an authentic record that one Robert Mure, of Rowalane, and his son were engaged in litigation with one Archibald Crawford, of Crawfordland, "for the wrangis, spoliacioun, away-takin and withhaldin fra thaim of certane heregeldis, bludwetis, and *merchetis*, as is contenit in the sum-mondis."<sup>3</sup>

With regard to the etymology of the word *Merchet*, it has been affirmed that when the good king Malcolm III. abolished the *droit du seigneur*, which the wicked king Evenus had established, he ordained that a little mark, or a half-mark, should be paid to the lord, in satisfaction of the supposed right, and that *Marcheta* or *Merchetum* is but the diminutive of *Marca*.<sup>4</sup> Others have suggested a less decent, if equally incorrect, origin of the term, from *March*, a horse, which there is no need to refute.<sup>5</sup>

<sup>1</sup> Boethius, *Hist. Scot.*, Lib. 8, fo. 35; Buchanan, *Hist. Scot.*, Lib. vii., fo. 117.

<sup>2</sup> Lib. iv., c. 31.

<sup>3</sup> *Acta Dominorum Concilii* (Rec. Com.), 291. Dr. Johnson in his journey to the Western Islands of Scotland (Works, Ed. Murphy, 1823, Vol. 12, p. 406) remarks that in Ulva, in the year 1778, was still "continued the payment of the "*Mercheta Mulierum*—a fine in old times due to the Laird at the "marriage of a virgin." It is not,

however, clear that the payment was called *Mercheta mulierum* on the spot, or that it had been an indication of villein tenure. It is in the Lowlands of Scotland that the true *Merchet* can be most distinctly traced.

<sup>4</sup> Buchanan, *loc. cit.*

<sup>5</sup> Should any one be interested in these old-world philological speculations he will find them in Skinner's *Etymologicon Lingue Anglicanae* (1671), in the part entitled *Etymologica Expositio Vocum Fo-*

It is hardly necessary to remark that the misdeeds or the good works of the Scottish Kings Evenus and Malcolm III. could not have affected English laws and customs in relation to *Merchet*. It must, however, be confessed that there occurs in the preface to a volume of grave English Law Reports, of as late a date as 1793, a passage which deserves comparison with the story concerning King Evenus. The custom of Borough-English is seriously traced to the custom of *Merchet*. Borough-English, says the learned editor, "was introduced among us in a barbarous age, and by a very wicked and adulterous practice, after this manner, viz; the lords of certain lands which were held of them in villenage, did usually" exact the *droit du seigneur*. "This usage was continued after those very lands were purchased by free-men, who in time obtained this custom [Borough-English], on purpose that their eldest sons (who might be their lords' bastards) should be incapable to inherit their estates."<sup>1</sup>

The custom of Borough-English gravely traced to *Merchet*.

*rensiem*, sub voc. *Marchet*. They have been copied by Laurière (*Glossaire du droit françois*) and many others. Houard pointed out (both in his note on the *Marcheta Mulierum* in the *Regiam Majestatem*, printed in his *Traité sur les coutumes anglo-normandes*, and in his *Anciennes loix des françois*, Vol. 1, p. 332, note 6,) that the passage in the *Regiam Majestatem* could not warrant the strange theories as to the *droit du seigneur* which some writers have founded on it. Sir David Dalrymple, of Hailes, (Lord Hailes) wrote also in his *Annals of Scotland* (3rd Edition), Vol. 1, pp. 395-419, to the same effect, with much skill, though he added some not very happy remarks, including one to the effect that *merekin* was used in Scotland in the same sense as

the Greek *μειρακιον*, which he says was that of a girl. The diminutive was, in fact, used only in the sense of a boy, though *μειραξ* was used in the sense of a girl also, and may, no doubt, be connected with the Cymric *merch*, &c. This, however, as will be shown below, is not to the point. The manner in which many absurd stories as to the so-called *droit du seigneur* arose in France is excellently shown in M. Louis Veuillot's *Droit du seigneur au moyen âge*, in which also King Evenus and the various curiosities of English literature on the subject receive their due meed of attention.

<sup>1</sup> 3 Mod. (5th Edn.), Pref. 6. Blackstone (2 Com. 83) remarks:—"It is not known that ever this custom (the *droit du seigneur*)

The diffusion of *Merchet*, and the use of the word, from Scotland to Hampshire, shown in records.

This very ingenious conjecture is entirely unsupported by authority. Perhaps the best way to show at once what *Merchet* really was, and to exhibit its diffusion throughout the length and breadth of the land, will be to cite a few cases from the records, with the dates and the places in which the custom is noted. A search by no means exhaustive has sufficed to trace it from the Lowlands of Scotland in the north to Hampshire in the south, and from Norfolk in the east to Shropshire in the west.

It has already been shown that "*merchetis*" were known in Scotland. At Whittington, in Northumberland, the word *Merchet* must also have been familiar; for early in the reign of Henry III. it was alleged that the ancestors of a tenant there "*semper dederunt merchetum de filiabus suis.*"<sup>1</sup>

In the 31st year of the reign of Henry III. we find that issue was joined as to whether certain persons at Rampton, in Nottinghamshire, held freely and as of inheritance, or in villenage, giving tallage every year at Michaelmas, at the will of the lord, and *Merchet* for marrying their daughters and sisters according as the lord might exact.<sup>2</sup> This agrees in part with the Rutland case in the present volume, in which a fine had to be given by the tenant to the lord on the marriage of his daughter or sister.

It was asserted in the 52nd year of the reign of Henry III., that the King's men of the manor of Withcote, in Leicestershire, were villeins, and not "*sokemannni*" of the

"prevailed in England, though it certainly did in Scotland (under the name of *Mercheta* or *Mar-cheta*)" till abolished by Malcolm III. Robinson, in the appendix to his *Work on Gavelkind* (3rd Edition), pp. 386-7, shows that he was aware of the existence of *Merchet* in England, but says "I believe on enquiry it will be found

"that the custom of Borough-English does not particularly obtain in those manors where such fine is paid."

<sup>1</sup> Bracton's *Note Book* (Ed. Maitland), Case No. 895. As to *Merchet* in Northumberland, see also *Testa de Nevill*, 389.

<sup>2</sup> *Placitorum Abbreviatio*, 125 b.

King, that they were bound to perform all kinds of villein customs for their land, to pay tallage at the King's will, and to give *Merchet*. A jury found that they were at a certain time villeins, had performed villein customs and villein services, and been accustomed to give *Merchet* on the marriage of their sons and daughters.<sup>1</sup>

In the reign of King John, the men of Weekley, in Northamptonshire, acknowledged by their attorneys that they were "villanos et consuetudinarios," doing whatsoever work the lord bade them, and giving *Merchet* for their daughters.<sup>2</sup> In the fifteenth year of the same reign, a jury found that the tenants of land at Ashby, in the same county, held by servile customs, and could not marry their daughters "sine redemptione."<sup>3</sup>

In an assise touching land at Heckingham, in Norfolk, a question arose, in the ninth year of the reign of King John, as to whether a person ought to pay "gersumam" "de filia sua maritanda."<sup>4</sup> In the eighteenth year of the reign of Edward I., when certain matters concerning the manor of Gressenhall, with its members in the same county, were in dispute, a jury found that one Thomas de Rothelaund was the villein of Jordan Folyot, who might make Thomas pay tallage high and low, at his will, and that Thomas was liable to "*Merchetum* carnis" "et sanguinis."<sup>5</sup>

Spelman has cited cases in which it was acknowledged that the men of East Bergholt, in Suffolk, were, in the reign of Henry III., obliged to give *Merchet* for marrying their daughters.<sup>6</sup> He has also cited a Berkshire case, in which one William Maynard acknowledged himself to be the villein of the Abbot of Abingdon, and to hold by villein services, including those "dandi maritagium et" "*marchetum* pro filia et sorore sua ad voluntatem ipsius

<sup>1</sup> *Placitorum Abbreviatio*, 161 a, b.

<sup>2</sup> *Placitorum Abbreviatio*, 95 a.

<sup>3</sup> *Placitorum Abbreviatio*, 92 a.

<sup>4</sup> *Placitorum Abbreviatio*, 57 a.

<sup>5</sup> *Placitorum Abbreviatio*, 221 b.

<sup>6</sup> Spelman's Glossary, *sub* voc. *Marchet*, where are cited the *Placita coram Concilio*, Mich., 37 Hen. 3. R<sup>o</sup>. 4.



"Abbatis."<sup>1</sup> So also in Surrey, in the reign of Henry III., there is alleged an exaction of "*merchetum* de "*quadam filia . . . quæ fuit maritanda.*"<sup>2</sup>

In assise of land at Alton, in Hampshire, in the 14th year of the reign of King John, the defendant pleaded that there ought not to be assise, because the land was "*villenagium domini Regis,*" and that he could not give his daughter in marriage, or even sell his male horse without ransom. And knights of the county testified that assise was never taken of lands of this nature.<sup>3</sup> At another place in Hampshire, according to the finding of a jury in the 43rd year of the reign of Henry III., a certain man was a villein, and gave *Merchet* for marrying a sister.<sup>4</sup> So also in the second year of the reign of King John, a jury found that a person held land at a place in Sussex "*et filiam suam maritare non potuit donec "*finierat cum domino suo."<sup>5</sup>

In Wiltshire a jury found, in the reign of Henry III., that "*homines de villa de Sheperigge . . . non possunt "*filias suas maritare absque *mercheto.*"<sup>6</sup> In Shropshire also, in the same reign, issue was joined as to whether certain persons of Barrow, near Much Wenlock, held of the Prior of Wenlock in villenage or not, "*et si debeant "*ei tallagia singulis annis, et *merchetum,* sicut ipse dicit, "*vel non.*"<sup>7</sup>

It was essentially a villein service, though not necessarily implying that the person

In all these cases it will be observed, whether the word *Merchet* occurs or not, that there is one common feature. The fine is essentially a villein service. Bracton says, "it is not for a free man to give *Merchet* "for his daughter."<sup>8</sup> He also speaks of one being so

<sup>1</sup> Spelman's Glossary, *sub. voc.* *Marchet*, where are cited the *Placita de Banco*, Easter, 34 Hen. 3., R<sup>o</sup>. 20.

<sup>2</sup> Bracton's Note Book, (Ed. Maitland), Case 465.

<sup>3</sup> *Placitorum Abbreviatio*, 85 a.

<sup>4</sup> *Placitorum Abbreviatio*, 147 a.

<sup>5</sup> *Placitorum Abbreviatio*, 29 a.

<sup>6</sup> Bracton's Note Book (Ed. Maitland), Case 1230.

<sup>7</sup> Bracton's Note Book, Case 1225.

<sup>8</sup> Bract., 26 a.

completely a villein that he cannot give his daughter in marriage without *Merchet*, to a greater or less amount, according to the will of the lord . . . that he cannot give his daughter in marriage without *Merchet* of certain or uncertain amount."<sup>1</sup> He says, however, that if a free man do give *Merchet*, he will do so, "*nomine villenagii, et non nomine personæ, nec etiam tenebitur ad merchetum de jure, quia hoc non pertinet ad personam liberi sed villani.*"<sup>2</sup>

rendering  
it was of  
the con-  
dition of a  
villein.

Britton uses similar language, to the effect that those who have made "ransom of blood" in respect of any tenement, but can prove that they are of free descent, and that the lord was not seised of them as villeins by reason of their persons, are not to be regarded as villeins.<sup>3</sup> So also, if a lord enfeoff a villein in fee, whether to hold by free services or by villein customs—even *Merchet*, or ransom of flesh and blood,—an assise will lie for the feoffee if disseised.<sup>4</sup> The same doctrine also appears in *Fleta*, who even more clearly expresses the principle that feoffment by a lord to a villein in fee, gives him his freedom, notwithstanding that the service may be uncertain, and of the vilest nature—even *Merchet* of blood.<sup>5</sup>

Littleton also says that if any free man choose to take any lands or tenements, to hold by such villein service as paying a fine for the marriage of his sons and daughters, he shall then pay such fine for the marriage. But, notwithstanding that it is the folly of such a free man to take lands or tenements in such form, to hold of the lord by such bondage, yet that does not make the free man a villein.<sup>6</sup> Littleton has, however, raised a very nice point as to *Merchet* by prescription, and has stated that such a prescription alleged by a lord of a manor, as affecting every tenant within the manor, is

<sup>1</sup> Bract., 195 a.

<sup>2</sup> Bract., 208 b.

<sup>3</sup> Britton, Lib. I., c. xxxii., § 3.

<sup>4</sup> Britton, Lib. II., c. vii., § 2.

<sup>5</sup> *Fleta*, 193.

<sup>6</sup> Litt., Sec. 174.

void as being against reason.<sup>1</sup> He explains that none ought to make such fines but villeins, "for every free man may freely marry his daughter to whom it pleaseth him and his daughter." Coke has pointed out that there is no discrepancy between this passage and that already quoted from Littleton. There could not be such a prescription as affecting the person, "but a custom may be alleged within a manor that every tenant (albeit his person be free) that holdeth in bondage or by native tenure, the freehold being in the lord, shall pay to the lord for the marriage of his daughter without licence a fine; and it is called *Marchet*, as it were a *chete* or fine for marriage. And here Littleton saith that none ought to pay such fines but villeins (that is), either villeins of blood, or free-men holding in villenage or base tenure."<sup>2</sup>

Unsuccessful attempt to infer servile condition as well as servile tenure from the payment of *Merchet* in the reign of Edward III.

In relation to this matter Coke has cited several cases, and among them, Fitzherbert's abridgment of the case in the present volume. He refers to a Replevin in which the superior lord, in avowing on the tenant of a manor, spoke of *Merchet* among other services.<sup>3</sup> He also mentions another, which appears to be of sufficient importance to merit a translation in full, as it shows that an attempt (though unsuccessful) was made in the latter part of the reign of Edward III. to infer servile condition, as well as servile tenure, from the payment of *Merchet*. "A man sued a plaint in respect of his beasts tortiously taken. *Kirton* came and avowed the taking as good in the place in which he sued plaint, for the reason that the land where the taking was effected is land held in villenage within the manor of B., which manor is a great seignory, whereof the avowant is himself seised, and this same plaintiff holds

<sup>1</sup> Litt., Sec. 209.

<sup>2</sup> Co. Litt., 139 b, 140. It is hardly necessary to consider Coke's etymology seriously. By a "chete" for marriage he probably means a

*secat*; but *mar*, in the sense of marriage, would not have been prefixed to it in pre-Norman times.

<sup>3</sup> Y.B., Easter, 10 Edw. 3, No. 41, p. 22.

the same land where the taking was effected, and that in villenage. In this manor it is the usage and has been the usage, from time whereof, &c., that all those who have been tenants of the lands in villenage, and have themselves married, or have given their sons or their daughters in marriage, without license of the lords of the said manor, should make a fine for that marriage at the will of the lord, for which fine the lords have been used to distrain from time [whereof &c.], and that in the same land held in bondage. And *Kirton* said that the said plaintiff gave his daughter in marriage without license to one J. ; wherefore, &c. And for 18s. for the plaintiff's fine he avowed, and that in the place in which the plaintiff sued plaint, as in tenements which he holds of us in villenage. *Belknap*. Say further between whom this has been used? *Kirton*. We will do so willingly. And he said between whom. *Belknap*. Sir, you see clearly how he has avowed for a certain service which is of a nature to place us in servile condition, in order to make us villeins, whereas we are free men, and the law does not so bind, and it is not the meaning of the law, that a free man should do such service, which would place his person in servile condition ; wherefore we pray judgment and our damages. *Kirton*. And we pray judgment, since it has been the custom of the manor, and it has been used from time whereof, &c., that all those who hold land in villenage should perform those services, and you do not deny that you are tenant of the same land in villenage, and that you have given your daughter in marriage without license ; wherefore we demand judgment, &c. *Belknap*. There is no service in the world which so quickly proves a man to be a villein as making a fine for marriage, wherefore, inasmuch as the plaintiff is a free man, and no law places a free man in servile condition, or binds his person therein, therefore, &c. ; and this matter for which the defendant has avowed is a service which would place him in servile

condition ; wherefore, &c. CA[VE]NDISH. It is a service issuing out of the land, and not by reason of the person, wherefore this service, which is done by reason of tenure, can never place the person in a servile condition, and therefore it seems that the avowry is good. *Kirton*. I fully allow that the law purports that no one shall place his person in servile condition ; for I say that he cannot place his person in servile condition, in case he is a free man, by any service that he can do : for, if a man is free, he can never become a villein afterwards, unless he acknowledge himself to be a villein in a court of record ; wherefore, although he did the services by reason of tenure, that will not place his person in servile condition, for in several manors of England a free man shall do services as a villein by reason of tenure ; and, because this has been the usage, therefore, since we avowed on the title by prescription, it seems that the avowry is good. THORPE. It is entirely contrary to law that a villein should make fine to his lord on account of his marriage ; for his person and all the goods that he has are the lord's : and, whereas you allege title of prescription, that cannot be understood ; for you have supposed by your avowry that he holds the land of you in villenage, so that the freehold is supposed to be in you ; wherefore the avowry is not maintainable by reason of prescription. *Kirton*. I fully allow that it is contrary to law that the lord should take fine of his villein ; still, it is the usage in several places in England that the lord can take fine. And, Sir, I have supposed by my avowry, that he who holds the land must do such services, so that this is a covenant on his own part to do the services ; wherefore, when he took the land on consideration of doing the services, he made a covenant for the services, and there is as good reason that he should be charged with these services as that he should be with other services, as to carry corn in August, or to plough his lord's land in winter, if there were such usages on the

land; wherefore, &c. *THORPE*. Such small services do not place the person in servile condition; but to make a fine for marriage<sup>1</sup> is a service of a nature to place the person in servile condition, and such services are bad, and contrary to law; wherefore, &c. *Kirton*. Suppose that I lease land to a man for term of his life, on condition that if he marry without license I may enter, and that he do marry, I may enter and may maintain my entry on the ground of the condition, and yet it is a condition contrary to common law; wherefore it seems in this case also that the avowry is maintainable. *Belknap*. It has not been the usage, from time whereof memory runs, to have such usages in land held in villenage; ready, &c. *WICHINGHAM*. You cannot have such an averment, for he has himself supposed by the avowry that he was himself seised, and that he leased to the plaintiff to hold by such services and customs; wherefore, inasmuch as he was himself seised, prescription cannot be in point here; wherefore, &c. *Belknap*. Then we say that the plaintiff does not hold this land by such customs; ready, &c. *Kirton*. That is not an issue, for the avowant has not supposed that the plaintiff is tenant of the land, but that he holds in villenage, and so the freehold is in the avowant; wherefore you shall not be admitted to take issue that he does not hold the land by such customs. *Belknap*. You have not such customs in respect of the land as you have supposed by the avowry; ready, &c. Issue was joined thereon.<sup>2</sup>

The ransom of blood had not disappeared from English law in the 15th year of the reign of Henry VI. In that year, on a writ *de nativo habendo*, the plaintiff alleged the taking of esplees in the villein, which included an exaction of tallage high and low at the lord's will, "et de son sang pur fits et fille marier."<sup>3</sup>

*Marchet*  
in the  
reign of  
Henry VI.

<sup>1</sup> For service, according to the printed report, but this is obviously a mistake.

<sup>2</sup> Y. B., H., 43 Edw. 3, No. 13, p. 5.

<sup>3</sup> Y. B., 19 H. 6, No. 65, p. 32.

Upon a review of these reported cases, it will appear, as in the cases found in the records, that payment to the lord for marriage in England, whether by the persons marrying, or by a father for his son or daughter, or by a brother for his sister, was a mark of servile tenure, though not necessary of servile condition. In some cases, it will be observed, the word *Merchet* is used, in others not. It is commonly, but not always, used where the fine is paid on the marriage of a daughter or sister.

*Merchet* as  
it appears  
in Court  
Rolls.

In the court rolls of various manors are to be found instances of payments on marriage, which are sometimes classed under the general head of *Merchet*.<sup>1</sup> The safest course, however, seems to be to recognise nothing as *Merchet*, except that which is so called in contemporary documents, and those payments which are, in all respects, identical in character with the payments to which the term is actually applied.

The instances in which the word *Merchet* is used in court rolls, appear to be rare in comparison with instances in which fines on marriages are mentioned. It does, however, beyond doubt, occur in the sense of a fine paid by father or brother to the lord, for the marriage of daughter or sister.<sup>2</sup> Where we find that men give various sums each for license to take a wife in general terms, that other men give various sums each for license to contract marriage with a widow,<sup>3</sup> we certainly have something analogous to *Merchet*; but there is nothing to show that we have *Merchet* itself. If any attempt is to be made to trace the etymology of the word, it is of the utmost importance that no meaning should be assigned to it which it cannot be clearly shown to have borne.

*Merchet*  
not to be  
con-  
founded

It may, however, be necessary, before proceeding further, to compare *Merchet* as known in time of legal

<sup>1</sup> See Maitland, Select Pleas in Manorial Courts.

<sup>2</sup> A good instance occurs in 1 Select Pleas in Manorial Courts, 94.

<sup>3</sup> 1 Select Pleas, Man. Courts, 12, 24, 27, 28.

memory, with the *leirwite* or *legerwite*, which seems to have been in existence before the Norman Conquest. From one point of view, *Merchet* appears to resemble *leirwite*, but only from one, and that not the most important. In the case printed in the present volume, and elsewhere, it appears that *Merchet* was payable when a daughter or sister "desponsata vel fornicata fuerit." It is difficult to discover that *leirwite* was connected in any way with the first of the two alternatives. In the so-called laws of Henry I. there is a mention of *legerwite* in connexion with the jurisdiction of the lord, but without anything to show precisely what it was.<sup>1</sup> There is also a statement that villeins had purchased *leirwite* and other minor forfeitures from their lords.<sup>2</sup> *Leirwite*, however, seems to have been a fine for incontinence; for in rolls of manor courts there are found such entries as this:—"The following women have been violated and " therefore must pay the *leirwite*."<sup>3</sup> It has sometimes been identified with the *adulterium*, mentioned in Domesday Book,<sup>4</sup> but without sufficient reason. The passages in Domesday Book<sup>5</sup> apply only to the county of Kent, and to the two boroughs of Lewes and Wallingford. They relate to *adulterium* (and rape in the borough of Lewes), but it is not clear that they relate to incontinence in general. It is, however, unnecessary to pursue the investigation further, because, whatever may have been the relation of *adulterium* to *leirwite*, it is clear that in some places, at any rate, *leirwite* was distinguished from *Merchet*. In an inquisition touching the manor of Broughton, which formed part of the possessions of the Abbot of

with *leirwite*, or with *adulterium*.

<sup>1</sup> Ll. H. I. (*Ancient Laws and Institutes of England*), c. xxiii.

<sup>2</sup> Ll. H. I. (*Ancient Laws and Institutes of England*), c. lxxxi. 3.

<sup>3</sup> Maitland, *Select Pleas in Manorial Courts*, 12.

<sup>4</sup> Spelman, Gloss., Tit. *Adulterium*.

<sup>5</sup> Vol. I (as printed), p. 1, p. 26, and p. 56 b.



Ramsey, it appears that one John Freeman held land for which he gave, among other things, *Merchet* for his daughter, *gersuma* for having his land, *leirwite* and heriot.<sup>1</sup> There are also very many instances in the Hundred Rolls of the year 7 Edward I., in which *leirwite* is mentioned as something distinct from the *redemptio carnis et sanguinis*, or *Merchet*.

The word  
*Merchet*  
not found  
(in the  
sense of a  
fine) in the  
Ancient  
Laws of  
Wales  
or Ireland.

Neither the Ancient Laws and Institutes of Wales, nor those of Ireland, show the word *Merchet* to have been used in the sense in which it is used in English records after the Norman Conquest. In both, however,<sup>2</sup> a trace of a payment in some respects similar may be found, and in the Cymric or Welsh language an expression which bears a very curious relation to *Merchetum*. Blount, the author of the well-known book on Tenures, has cited,<sup>3</sup> in his Law Dictionary, a deed dated the 16<sup>th</sup> of October, 4 Edward VI., in which the lord of a manor in the county of Hereford released to John ap John, his heirs and assigns, certain services issuing out of a tenement in the manor, among which was "*Gwabr merched*." This is interpreted to mean "*Lairwite*," but whether in the deed itself, or by Blount, is not apparent. It has also been stated<sup>4</sup> that in the manor of Dynevor, in the county of Carmarthen, every tenant, on the marriage of his daughter, paid ten shillings to the lord, the fine being called "*gwabr merched*" in the Cymric language. As to the translation of the two words, there is not any doubt, as *gwabr*, or *gobr*, or *gobyr*, is a fee or fine, and *merched* is the plural of *merch*, a girl, maid, or daughter. The use, therefore, of the expression "*gwabr merched*," in the sense of a fine on the marriage of

<sup>1</sup> 1 Charters of Ramsey Abbey (M. R. Series), 334.

<sup>2</sup> Ancient Laws and Institutes of Wales (Rec. Com.) in the several codes. See also Ancient Laws and Institutes of Ireland (*Senchus Mor*), Vol. 3, pp. 315, 317, Vol. 4,

pp. 61-65, where it would appear that some sort of payment was made to the head of the family, or the head of the tribe.

<sup>3</sup> *Sub. voc. Gwabr-merched.*

<sup>4</sup> Blount, L. D. *sub voc. Marchet.*

daughters, is certainly a remarkable coincidence. Had, however, *gwabr* or *gobyr merched* been used only in the sense of *leirwite*, it certainly could not have been *Merchet*.

In the Ancient Laws of Wales, the technical term corresponding most nearly with *merchetum* is *amobyr* (*am-gobyr*), which is translated sometimes as coupling fee, sometimes as compensation fee. It is, however, the fact that *gobyr merched* is a collocation of words which does occur in the Welsh Laws. One passage has been cited in the History of Manchester, by Whitaker,<sup>1</sup> whose statement has been copied into many other works. He was unfortunately betrayed into an error which vitiates his argument. He says that "the famous *Mercheta* . . . . is apparently nothing more than the *Merch-ed* of Howel Dha, the daughter-hood or fine for the marriage of a daughter." In a note he adds "See *Merched*, Lib. i. c. 14 a. 27, etc."<sup>2</sup> By those who have not verified the reference it might be supposed that *Merched* is a substantive title in the Welsh Laws. All that is actually found is the following passage under a wholly different general heading:—"Efe a gaiff obreu merched y maer biswail,"<sup>3</sup> which means that a certain officer was to have the fines of the daughters of a particular kind of bailiff. "*Obreu*" is simply the plural of *gobr* or *gobyr* (a fine), the initial *g* having been omitted according to a definite rule of mutation as affected by the preceding word. "*Merched*," as already explained, is the plural of *merch* (a daughter), and the two words have, perhaps, been fairly enough translated, in the edition to which Whitaker refers, *Maritagium filiarum*. There is no such thing as "*Merch-ed*" in the sense of "daughter-

The payment most nearly approaching to *Merchet* in the Welsh laws is usually called *Amobyr*.

<sup>1</sup> Vol. 1, p. 265.

<sup>2</sup> Vol. 1, p. 270.

<sup>3</sup> Whitaker's reference has been traced to the *Leges Wallie*, Ed. Wotton (A.D. 1780), Lib. 1, c. 14, "*De Dispensatore*." The literal

translation of the words is "he shall get fines of daughters of the dung-bailiff." As to the plural formed in *eu* (*obreu*) instead of the later *au*, see Zeuss *Grammatica Celtica*, 291-2.

hood" in the Welsh Laws. *Amobyr*, however, there is, and that was, like the *merchetum* of some places, payable either on marriage or on previous breach of chastity. The amount varied with the rank of the person,<sup>1</sup> as appears in various codes.<sup>2</sup> In one of the codes it is stated that the woman paid the *amobyr* according to the privilege of the land upon which she was born; "and no person" is to pay it for her, unless her father, or her brother, "or one of her kindred, give her without taking surety for the *amobyr*; in that case he must pay it, as he did not take surety for it."<sup>3</sup> We thus have the father or brother liable for the *amobyr*, in certain cases at any rate, in a manner resembling that in which he was liable in England for the *Merchet*.

Confusion arising from the translation of the Welsh *Amobyr* by the Latin *Merces*.

In the Latin translations of the Cymric Laws there occurs a mode of expression which might easily mislead. The word *amobyr* is rendered by the Latin *merces* in its various cases, as for instance, "*mercedem ejus, id est amobyr.*"<sup>4</sup> This suggests the idea that *Merchet* may be merely a mediæval corruption of *merces*, the word for fee or payment in general being used, *κατ' ἐξοχήν*, for the fee due on a particular occasion. Such an explanation, however, attractive though it may appear at first sight, will not bear close scrutiny. *Merces* is a fair translation of *gobyr*, "*mercedem ejus*" a not very inapt rendering of *amobyr*—the fee for her coupling or her ransom. It is clearly a mere coincidence that the Latin word for a fee or payment happens to resemble the Cymric word for a maid.

The case for the derivation

On consideration of these facts there might seem reason to believe that the foundation of the word

<sup>1</sup> See the Venedotian Code, Ll. 42-50 (Ancient Laws and Institutes of Wales, Rec. Com. Edition), p. 45, and the Dimetian Code, Ll. 40 and 42-46 (Ancient Laws, &c.), p. 258.

<sup>2</sup> The description of *Marcheta Mulierum* in the *Regiam Majestatem* so closely resembles the description

of *Amobyr* in the Welsh Laws as to suggest the idea that one has been taken from the other, or the two from a common source.

<sup>3</sup> Welsh Laws (Ancient Laws and Institutes of Wales), p. 396.

<sup>4</sup> *Ieges Wallia*, xxiii. (xi.) (Ancient Laws, &c., p. 826).

*merchetum* is a word signifying maid or daughter of *Merche* from the Welsh or Cymric *Merch* (a maid, or daughter). Even if this were admitted, however, it would not necessarily follow that the word came into English records solely from a Cymric source. In order to prove that, it would be necessary to prove also that the same or a similar word with the same meaning did not exist in other languages introduced into England. On this point there is but little evidence of a trustworthy nature. On the one hand the word seems to be absent from Pre-Norman laws, charters, and literature in England, but on the other hand it seems to have existed in Teutonic and Scandinavian languages on the continent, as for instance in the form *Mær* (gen. and plur. *Meyjar*) in Icelandic, and in the form *Mergà* in Lithuanian.<sup>1</sup> If it did exist in the vernacular as spoken in England before the Norman Conquest it might, therefore, have been either imported by Scandinavian or Teutonic invaders, or acquired by them from the earlier population, as were a few other words relative to matters in which women are interested.<sup>2</sup> Still, in estimating the probabilities, it must always be borne in mind that *merch* is certainly known to be a Cymric word for maid or daughter, and it is not known with certainty that such a word was brought into England by any non-Cymric tribe or nation.<sup>3</sup>

The subject has a bearing on a very obscure point of history. If *Merchet* did indeed indicate a survival Its bearing on history.

<sup>1</sup> According to the Glossary to *Thomas Saga Erkibyskups* (Ed. Eiríkr Magnússon, M. R. Series), "the oblique cases of *Mær* refer to the thema *Mey*, a maiden." For a comparison of the Cymric *Merch*, with the Lithuanian *Mergà*, see Rhys's *Lectures on Welsh Philology* (2nd. Ed.), pp. 74 and 93. See also Wachter, *Glossarium Germanicum*, sub voc. *Merch*.

<sup>2</sup> e.g. *Dad*, gown, bride, &c.

<sup>3</sup> The derivation of *Merchet* from

the Cymric *Merch* not only appears in Whitaker's *History of Manchester*, but is set out in Hazlitt's *Edition of Blount's Tenures*, Glossary, sub voc., and has recently been put forward as an established fact in Lewis's *Ancient Laws of Wales viewed especially in regard to the light they throw on English Institutions*, pp. 234-5, &c. It can, therefore, hardly be dismissed without notice.

of a Cymric word in connexion with a Cymric custom even in Norfolk, Suffolk, and Essex, it would, independently of all other evidence, go far to establish the survival of a considerable Cymric population, both male and female, in the midst of their Teutonic conquerors. It would imply not only the female serfs but also their male relatives who paid the fine on their marriage, and these would probably constitute the most numerous class in the land.

The *a priori* objections.

The obvious and at first sight very plausible derivation of *Merchet* from *gwabr*, or *gobr*, or *gobyr merched*<sup>1</sup> is, however, not free from difficulties, and those of a very serious character. It postulates unity of custom known by one name in early times throughout the whole of Britain, except perhaps the Highlands of Scotland,—a native custom, retaining its vitality through Roman, Saxon, Anglian, and Danish domination, and asserting itself, in its own name, even after the Norman Conquest. It is true that there is one great distinction between the *Amobyr* of the Cymric Laws and the *Merchet* existing in England after the time of legal memory. The payment of *Merchet* was certainly the mark of a servile tenure; the payment of the *Amobyr* was not. Conquest alone, however, it may perhaps be said, would sufficiently account for this difference, because, if the conquerors adopted such a custom of a subject people, they would naturally adopt it only with a difference in their own favour. In this case, therefore, the later difference or distinction would serve only to illustrate the original unity.

The graver objections founded on ascertained facts.

Great as are the *a priori* objections to this derivation, the objections from well ascertained facts are not only far greater, but, as it seems, insuperable. The absence of the word *Merchet* (in the required sense) from the ancient laws of Wales, and the use of the word *Amobyr*

<sup>1</sup> It is a curious fact that an older form of the plural *merched* was *merchet*. See Zeuss, *Gramm. Celt.*, 297.

for the maiden's ransom are in themselves points of great significance. The occurrence of the words *Gobyr merched* in the laws and in other Welsh documents might perhaps be a sufficient counterpoise, if the Welsh words were the exact equivalent of *Merchet*, or if there were sufficient reason for believing that *Merchet* meant ransom of maids. There is, however, ample evidence that this was not the signification of the term.

In some of the cases already cited it appears that the payment was made not only on the marriage of a daughter or sister, but also on the marriage of a son. If only one or two such instances could be found, it might, perhaps, be possible to explain them away; but there is abundant proof that holders of land in villenage had to ransom their flesh and blood of either sex, and not only their daughters or sisters, and that the ransom was known as *Merchet*. At Sandford, in the county of Oxford, certain "*Cotarii*" had to give *Merchet*, which is explained to be "*redemptionem facere pro filio et pro filia maritandis*."<sup>1</sup> At Kirtlington, in the same county, it was found, with regard to several tenants in villenage, that each "*redimet pueros suos ad voluntatem domini*."<sup>2</sup> Some "*Servi*" of Fritwell and various other places did the like; and, in short, it was the common practice for persons of servile condition, or holding by servile tenure, to ransom their "*pueros*," that is to say, their children of either sex, in Oxfordshire.<sup>3</sup> In Huntingdonshire the practice was the same. Of each of twenty-five tenants in villenage in Molesworth, it was found "*si pueri ejus maritari debeant, faciet redemptionem ad voluntatem domini*."<sup>4</sup> So also it appeared with regard to certain persons (under the head of "*Wormedik: Villani*") that "*omnes isti villani præ-nominati faciunt redemptionem carnis et sanguinis*

*Merche*  
shown to  
be the  
ransom  
not of  
daughters  
and sis-  
ters only  
but of  
sons also.

<sup>1</sup> *Rotuli Hundredorum*, 7 Edw. I., printed Rec. Com., Vol. II., p. 722 b.

<sup>2</sup> *Rot. Hundr.*, Vol. II., p. 823 b.

<sup>3</sup> *Rot. Hundr.*, Vol. II., pp. 824 b, 825, 826, &c.

<sup>4</sup> *Rot. Hundr.*, Vol. II., p. 618.

" pro filiis et filiabus suis, ad voluntatem dominorum  
" suorum de Kynebolton." <sup>1</sup>

Read by the light of these passages, the *redemptio carnis et sanguinis* is seen to be not by any means simply a fine or ransom for a daughter or sister, but literally the ransom of flesh and blood—that of a son or daughter where the father was living, and, in some cases, that of a sister, where the father was dead but the brother was living. When, therefore, the expression is found without qualification, there seems to be but one reasonable interpretation of it. Thus, when it appears that in Cambridgeshire "Adam Slach est cotarius et tenet in villenagio . . . et debet gersummare terram suam, et faciet redemptionem carnis et sanguinis," <sup>2</sup> there is beyond doubt an instance of *Merchet*, and of *Merchet* not restricted to the female; so also when it appears that "Johannes Col est custumarius . . . et debet gersummare terram suam, et faciet redemptionem sanguinis et carnis." <sup>3</sup> In Bedfordshire villeins or persons holding land in villenage are, in the Hundred Rolls of the year 7 Edward I., commonly described as "servi," or "nativi" or "nativi et servi," with the addition "de sanguine suo emendo ad voluntatem domini."

Fine for marriage outside the vill, or lord's territory, called *Merchet*.

Among the apparent varieties in the nature of *Merchet* one seems specially deserving of notice. At Leighton, in Bedfordshire, no person of the vill could give his daughter or sister in marriage without the vill, except upon payment of ransom, and with the license of the lord. <sup>4</sup> So also at Wivenhoe, in the county of Essex, *Merchet* was due in this wise:—If the tenant desired to give his daughter in marriage to any free man without the vill, he was to make his peace with the lord for the marriage, and if he gave her in marriage to any customary tenant of the vill, he was to give nothing for the marriage. <sup>5</sup> In

<sup>1</sup> *Rot. Hundr.*, Vol. II., p. 622.

<sup>2</sup> *Rot. Hundr.*, Vol. II., p. 522 b.

<sup>3</sup> *Rot. Hundr.*, Vol. II., p. 523.

<sup>4</sup> *Plac. Abbr.*, 86 b.

<sup>5</sup> *Extenta manerii de Wivenhoe* of two different dates, cited by Spelman, *sub voc. Marchet*.

Hampshire no person holding land of a particular manor in villenage could give his daughter in marriage *extra feodum*, unless he had first made a fine.<sup>1</sup> A jury found in Kent that if any tenant in villenage wished to give his daughter in marriage *extra hundredum*, he had to ask license of the bailiff and pay forty pence, and if he gave her without license he had to pay forty-two pence, and was in mercy of the King.<sup>2</sup> These cases, and others cited below, in relation to the *Merchet* both of sons and of daughters marrying outside the lordship, need very careful comparison with those cases of *Merchet* in which the lord has, or seems to have, an absolute right to it without regard to the person with whom his serf is to be contracted. Their chief importance lies in the resemblance borne by them to a custom which prevailed elsewhere.

The *droit de formariage* (*foris-maritagium*) seems to have been widely diffused on the continent. This was a right which the lord had in respect of the marriage of his serf, either with a person of free condition or with the serf of another lord. The lord's consent was required, and he had the right to exact a fine.<sup>3</sup> It is not surprising that the custom is found in this form in England as elsewhere, but the application to it of the term *Merchet* is very remarkable.

In relation to those cases in which the consent of the lord and a fine to the lord were the conditions of marriage without the lordship, an interpretation of the word *Merchet* or *Marchet* might be suggested which would, perhaps, be open to fewer objections than any of those hitherto put forward. The *nativi* were *nativi* in relation to the territory of a particular lord.<sup>4</sup> There must have

*Foris-maritagium, for marriage, seu-mariage, on the continent.*

Suggested interpretation of *Merchet*, or *Marchet*, in relation to *Foris-maritagium* and the *Mearc*, *Mark*, or boundary.

<sup>1</sup> Bracton's Note Book, case 395.

<sup>2</sup> Bracton's Note Book, case 758.

<sup>3</sup> Thus according to the *Lex Salica*, Tit. xxvii., Art. 6, "Si quis servus ancillam alienam, sine voluntate domini sui, sibi in conjugium copulaverit, cxx. denariis,

"qui faciunt solidos iij., culpabilis judicetur, aut cxx. ictus accipiat." See also the passages from various charters cited by Ducange, *sub voc. Foris-maritagium*.

<sup>4</sup> Or of a particular hundred, &c.



been some recognised delimitations between his possessions and those of the neighbouring lords. The boundary, there appears to be no doubt, was called a mark (*mearc*, *marque*, *margo*), as the boundary between adjoining countries was called. The *nativus* who fled beyond the boundary could be pursued and brought back. His *sequela* (a word which included his offspring, if it did not signify his offspring alone) was subject to the same rule. It is obvious that, whether for the purpose of marriage or any other purpose, neither the *nativus* nor his offspring was allowed to go permanently beyond the boundary of his lord's land without the lord's consent. It does not therefore seem unreasonable to suppose that when the lord permitted the serf's offspring to go beyond his land-marks, and received some compensation, the payment might have been known by some term having reference to the boundary or mark.

It is true that the term *foris-maritagium* was applied not only when the serf of one lord married the serf of another, but also when a serf married any person of free condition. In the latter case also, however, the lord's mark or boundary would probably be passed in one sense or other; the female serf would belong to the lord's demesne, and would leave it if she married a freeholder. So far as *foris-maritagium*, or *formariage*, or *feur-mariage*, in any sense, is concerned therefore, a word having reference to the mark or boundary might very well be applicable to the ransom paid.

Evidence  
of the use  
of the word  
*Marcha* in  
the sense of  
a border-  
fine or tax.

Should it be argued that some analogy ought to be found in the case of other taxes, or imposts, for crossing a boundary, an answer can be given. Carpentier has cited a charter of the year 1406 relating to goods "quæ in *marcha* regni vel provincie inferuntur, aut ex eis efferuntur," on which there was a duty of 3d. in the pound, "quæ impositio vulgariter *Marcha* nuncupatur."<sup>1</sup> In relation to the mark or boundary, there is also an

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<sup>1</sup> In the later editions of Ducange, Gloss., *sub voc. Marcha* (3).

important passage in a fragment of *Capitula ad Legem Alamannorum*:—"si quis alterum ligat, et foris marcham eum vendit, ipsum ad locum revocet, et xl. solidos componat."<sup>1</sup> Moreover, it is clear that, with regard to villeins, the lord's land-marks were regarded in the same way as the frontiers of a state. Waste could be assigned in respect of villeins, and when it was so assigned, it was said to be "*exulando nativos*," though of course they were not banished from England.<sup>2</sup>

If it be assumed that *Merchet* (in the sense of a ransom on crossing the border to be married) was paid for persons of servile condition, it is not difficult to see how the same term might have come to be applied to a service rendered by persons of free condition holding their lands in villenage. The lord who permitted this kind of tenure would not be disposed to sacrifice any of his profit. From the lord's point of view every person who held villein lands was subject to every incident of villenage in respect of those lands, though, if he fled, he could not be claimed as a villein. If the son or the daughter of a villein regardant marrying beyond his land-marks was a source of profit, so also should be the son or the daughter of a free-man who held a villein's lands. Inasmuch, however, as the son and daughter of free parents were not regardant to the land, they would, if they married a person of free condition, necessarily be personally without the *dominium* of the lord. As between him and them, therefore, this marriage would necessarily be a *foris-maritagium*, and consequently he would consider himself entitled to their ransom for crossing his border.

This interpretation of *Marchet*, or *Merchet*, is in harmony with a large class of the facts.

<sup>1</sup> Ed. Pertz, *Mon. Germ. Hist., Legum Tom. iii.*, p. 38. The law itself is at p. 60 (*L. Hlothar.*, xlv. 1).

<sup>2</sup> There is a case in the present volume (M. 15, No. 62) in which waste was alleged as "*vastum, venditionem, et destructionem, et exulandum de terris, domibus, boscis,*

"*gardinis, et hominibus*, in Kyl-peck," and particularly "*exulando quosdam Robertum Gilbert, Adam le Bowyare, et Rogerum Hulle, nativos*." This is in no way exceptional, the words "*exulando nativos*" occurring frequently in actions of waste.

On this supposition, there would seem to be a sufficient explanation of all cases in which *Merchet* was paid for the marriage of a serf—son, daughter or sister—outside the lord's *dominium*, and a sufficient explanation also of the very large class of cases in which the same fine was paid by any free-man holding in villenage. It remains to be considered whether the payment by persons of servile condition to their lords, upon marriage of a daughter or sister within the same lordship, or upon loss of chastity, can be explained on the same hypothesis. Directly, of course, it cannot. A payment on marriage, of which the very essence is that the marriage is beyond the border, cannot readily be identified with a payment for a marriage within the border. The only way apparently in which the term could have been applied to both, is through the application of it to one in the first instance, and subsequently to the other by transference. It is not altogether unnatural that a word used at first in relation to a particular kind of marriage of a serf, should afterwards have been used in relation to any kind of marriage of a serf.

A fine for marriages beyond the border might easily have been extended to marriages within the border.

It may, no doubt, be objected that if the lord could exact the fine when both the marrying persons were within his lordship, this, rather than the fine on *foris-maritagium*, should be regarded as the origin of the custom. The relations of lord to serf, however, do not seem to be in accordance with this argument. In theory, all that in any sense belonged to the serf or villein was the property of the lord; or, at any rate, nothing could be aliened without the lord's consent. If this theory were strictly enforced, it is obvious that the serf's son and daughter, and the money with which he could pay their ransoms, were the lord's already, without any special tax, fine, or custom. To admit that the serf has of his own, wherewithal to pay a fine to the lord on a particular occasion, is to admit that he has some sort of property, however qualified, in his own possessions. His offspring is not in the same condition as the offspring of

his lord's horses or kine. He has already acquired some customary privileges. It seems far more probable that the idea of making him pay for the marriage of a son or daughter after the acquisition of such privileges, should have suggested itself when the son or daughter was to go altogether out of the power of the lord, than that it should have originated upon any marriage within the lordship, when there could not be any loss to the lord. On this supposition, too, the payment for loss of chastity would be sufficiently explained, because the woman's chances of marriage were lost, or at any rate greatly diminished, and with them the lord's chance of a fee for a marriage beyond the border. It would be only natural that, as the customary rights or privileges of the *servi terræ ipsius cui nati sunt* became more fully recognised, or better defined, the privileges of the lord should also take a more definite shape. He might reasonably argue that if he allowed his villein to accumulate personal property, he might at least prescribe the conditions on which it was to be held, and a fine for marriages beyond the border would easily be extended to marriages within the border.

There are still in existence some traces of the mode in which *foris-maritagium*, or a fine for marriage of a person of either sex beyond the borders, may have become *maritagium*, or a fine levied on marriage in general. At Brightwell, in Oxfordshire, if a tenant in villenage "*filium* " *vel filiam extra terram domini voluerit maritare, ipsos* " *emere tenetur.*"<sup>1</sup> This is an instance of the ransom levied when not only a daughter, but a son also, made a foreign marriage, and apparently only when the marriage was foreign. At Spaldwick, in Huntingdonshire, however, it is clear that the *foris-maritagium*, the fine on marriage outside, was originally the true mark of villenage rather than the fine on marriage in general.

Traces of  
the change.

<sup>1</sup> *Rot. Hundr.*, Vol. II., p. 766.

The men of Spaldwick held, as found by Inquisition, by services of which the following was one:—"si filia alicujus infra socam maritali debeat, dabit xx. denarios, si extra secundum voluntatem domini."<sup>1</sup> The giving of *Merchet* at the lord's will was obviously a sign of servile holding; but it is not by any means so easy to understand why the payment of a fixed sum should have been regarded in that light at all. The right of the lord or guardian in chivalry to dispose of his infant ward in marriage was quite as oppressive, and yet was an incident of the most honourable kind of tenure.

The fine, at the lord's will, for marriage beyond the border, is a surer sign of villenage than a fixed payment for marriage in general.

Upon consideration of the words of Bracton, Fleta, and Britton, as well as of various reports, all to the effect that *Merchet* was an indication not only of villein tenure, but of its very lowest form, it is impossible to come to any conclusion but that originally *Merchet* must have been something very different from a fixed payment to be made on certain well defined occasions, and not to be extorted by blows, as in the Salic Laws. This fine of settled amount, leviable by distress, must certainly be the outcome of a higher relative status acquired by the tenant in villenage from his lord. The absolute power of the lord, however, to exact whatever he pleased, whenever any of the *sequela* of his villein left his lordship for the purpose of marriage, might well be described as *Merchet*; and the payment of *Merchet* or *Marchet* in this sense might well be described as the one sign above all others which indicated a holding in villenage—as being the indelible stigma borne by the *servus terræ*. It was precisely the same in France. The words "les habitans d'icelle ville estoient de serve condition comme *taillables*, à *volenté*, de morte main, et de *formariage*, et autrement"<sup>2</sup> are to all appearance identical in meaning with those found in our English Hundred Rolls. They may well

<sup>1</sup> Rot. Hundr., Vol. II., p. 616.

<sup>2</sup> This remarkable passage (1389) is cited by Godefroi *sub voc. For-*

*marriage* in his Dictionary of the Early French Language from "Arch. " K. 54, pièce 45."

be compared with passages already quoted, and with the following, which constitutes a common form in the ancient Hundred of Muresley, in the county of Buckingham:—  
 “tenentes illarum terrarum sunt servi de sanguine suo  
 “emendo ad voluntatem domini, et ad alia facienda quæ  
 “ad servilem conditionem pertinent.”<sup>1</sup>

It is sufficiently clear that the one idea which is always prominent when the word *Merchet* is used is that of ransom—and not necessarily the ransom of a female. *Merchet* is the ransom of flesh and blood, more often, perhaps, of the villein-tenant's daughter or sister than of his son, but by no means unfrequently of his son also. All the curious theories which have grown up around the term, on the assumption that it had relation only to girls, must necessarily be abandoned as soon as the meaning assigned is found to be incorrect. As *Merchet* had no special relation to sex, the fabric raised on various sexual speculations is as baseless as that of a vision, and vanishes as soon as an attempt is made to inspect it closely. Be the etymology what it may, it must be sought not in the root of any word having reference to maids or daughters in particular, but in the root of some word having reference to blood, to purchase, to redemption or enfranchisement, or the price paid for it, or to a particular kind of tax, fine, impost, or exaction.

Recapitulation:  
 inadmissibility of various theories as to *Merchet*.

Both the Latin *mercatus* and the Latin *merces* approach very nearly to one of these significations, but there are many objections to the acceptance of either as the original of *Merchet*. *Mercatus* (or *mercatum*, in mediæval Latin) meant a market, associated with which was the idea of publicity. This is something very

<sup>1</sup> *Rotuli Hundredorum*, Bucks, 7 Edw. I., Hundred of Muresley *passim*. The jurors of different Hundreds used different expressions to indicate the same thing. Thus in the ancient Hundred of

Studfold, the common form was “faciunt merchet”; in the ancient Hundred of Bunstowe sometimes “dant redemptionem sanguinis,” sometimes “dant merchet pro carne et sanguine suo.”

different from a private transaction between a lord and his villein. *Merces*, the price, or *mercedes*, the prices, may appear to come nearer to the desired meaning; but something more precise seems to be required, and something which may reasonably be supposed to have been used in the vernacular. *Merchet* not unfrequently occurs side by side with *Leirwite*, *Blodwite*, heriot, and other words of Teutonic origin, and it is not easy to see how a Latin word could have found its way into such company. There is a further argument against both *mercatus*, or *mercatum*, and *merces*, which may be regarded as conclusive. It is that the true Latin for *Merchet* is *redemptio*, or *redemptio carnis et sanguinis*, the forms *merchetum*, *mercheta*, *marcheta*, or *mergettum* having always the appearance in Latin of technical terms of non-Latin origin.

Thus it becomes almost certain that *merchet* cannot be derived from *march*, a horse, as has been suggested with more ingenuity than decency by some writers, or from *merch*, *mergå*, *mær*, or any other form of a word signifying a maid in any language, or from *mercatus*, *merces*, or any other Latin word. It cannot be French, as the French appear to have known it only in the form *marquette*, or *marquete*, used in denunciations of the wicked King Evenus and in commentaries on the supposed Scotch and English practices.<sup>1</sup>

The hypothesis now proposed is only tentative.

The *foris-maritagium*, or *for-mariage*, was identical with one at least of the forms of *Merchet*, and, by whatever name called, seems to have existed wherever a Teutonic population had settled in a Roman province. *Foris* in this combination meant *foris limites*, *foris marginem*, outside the boundary of the lord's *dominium*. *Mearc* in pre-Norman England had the signification of *limes* or *margo*, among others, and it is therefore by no means impossible that *Merchet* may be the equivalent of

<sup>1</sup> See 2 Michelet, *Origines du droit français*, 102, *Laurière, Glossaire du droit français*, &c.

*foris-maritagium*. This is, however, at present, perhaps, little more than a conjecture. It is merely one hypothesis, for which no more is claimed than that it is more likely to be true than its predecessors, partly, indeed, because its predecessors are demonstrably untrue, but partly also because it seems to be in harmony with the facts. The chief object of the foregoing remarks has, indeed, been to clear the ground for further investigation rather than to set up as completely proved any new theory, for which the materials are as yet, perhaps, insufficient. It is, however, hoped that the collection of instances may have served three good purposes, the first to show what *Merchet* really was, the second to show what it was not, and the third, to show how widely it was spread in Great Britain. The history of villenage, of which *Merchet* constitutes a small but not unimportant portion, has yet to be written.

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It was stated, in the Introduction to the volume of Year Books next preceding the present, that "the fourteenth and fifteenth years of the reign of Edward III., though they have not attracted the special notice of historians, are in many ways memorable." An attempt was made, in the space of about fifty pages, to show in what respects the period is remarkable, especially from a legal and constitutional point of view. Out of these fifty pages about five were devoted to the attitude of the clergy in general, and of Archbishop Stratford in particular, towards the King and his policy.

The five pages seem to have attracted more notice than the rest, and it has been pointed out, with perfect truth, that many historians have written at far greater length on the subject of Stratford and his struggle with the King. As, however, the Archbishop and the clergy did not constitute the whole of English society, and as their conduct was but one among many elements, the undoubted fact that some historians have

On a passage in the Introduction to the volume next preceding: Bishops and Treason.



concentrated their attention on this particular phase of the time, can hardly be accepted as sufficient evidence that they have studied the period in its entirety.

If, indeed, it were right to enter into controversy here, it would not be difficult to show how imperfectly even Stratford's case has been investigated by those who believe that he established the right of Bishops to be tried by Peers of the Realm in cases of treason and felony. As, however, it appears to be settled law that Bishops have no such right, it is as unnecessary as it would be unbecoming to mention the names of historians who have taken a different view. A well-known note of a well-known writer on Constitutional History, now no longer living, will probably be in the minds of all who read this Introduction; no more need be said of it than that it bears obvious marks of haste, and is altogether unworthy of its author. It is strange that any historian should have been led by the monk of Birchington, or those who have quoted or misquoted him, to suppose that there was ever any question of trying Stratford, or any one else, for treason in the Court of Exchequer. Birchington's obscure story was deliberately omitted from the Introduction to the preceding volume, and it was therein expressly stated that his "authority is not " of the highest order."<sup>1</sup> It could be shown, and possibly may be shown on some future occasion, in what manner the monk, who had heard some gossip about the Exchequer, more than forty years after the event, converted into an indignity put upon the Archbishop an appearance by attorney, to which neither the Archbishop nor his attorney had the slightest objection, and which was not in any way connected with either treason or felony.<sup>2</sup>

<sup>1</sup> p. li., note 1.

<sup>2</sup> Lord Campbell has said, in his *Lives of the Lord Chancellors* (chap. 14), that Stratford "was " seized by officers and carried to

" the bar of the Court of Exchequer, where he was called " upon to plead to an information " filed against him by the Attorney-General." No authority is

It cannot, however, be denied that the manner in which Bishops should be tried for treason and felony is a subject of some interest. It may be, too, that the historical foundation of the accepted legal doctrine is worthy of a complete examination. That is a task which may possibly be undertaken elsewhere, if not in these pages.

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I have again the pleasure of offering my best thanks to the Benchers of the Honourable Societies of the Inner Temple and Lincoln's Inn for the loan of their valuable MSS.

L. OWEN PIKE.

11 August 1891.

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cited except the *State Trials*, in which occurs, at second or third hand, the story told by Birchington, and repeated *usque ad nauseam*. Lord Campbell knew, of course, that there could not have been any question of trying Stratford for treason in the Exchequer, and attempted to force the account which he quoted into agreement with the Exchequer

practice of his own days. It is only necessary to remark that there is no mention of an information by the Attorney-General in the cited passage of the *State Trials*, or in Birchington's narrative, and that there was no Attorney-General, in the modern sense, in Stratford's time.



TABLE OF CASES IN THE PRESENT VOLUME.<sup>1</sup>

|                                                                     | Page |
|---------------------------------------------------------------------|------|
| Abberbury (plaintiff in Error) <i>v.</i> Boddenho - - -             | 202  |
| Acton <i>v.</i> Acton - - - - -                                     | 282  |
| Bee <i>v.</i> Burmyngham - - - - -                                  | 166  |
| Belesby and wife <i>v.</i> Rayner (John and Edmund) - - -           | 330  |
| Birston <i>v.</i> Billocby and another - - - - -                    | 72   |
| Bonyngton <i>v.</i> Grene - - - - -                                 | 260  |
| Botiller <i>v.</i> Molyns - - - - -                                 | 138  |
| Boulwas <i>v.</i> the Abbot of Reading - - - - -                    | 40   |
| Bray <i>v.</i> the Prior of the Hospital of St. John of Jerusalem - | 60   |
| Braybroke (plaintiff in Error) <i>v.</i> the Abbot of Woburn -      | 214  |
| The same <i>v.</i> the same - - - - -                               | 216  |
| Broun <i>v.</i> Broun - - - - -                                     | 60   |
| Browes <i>v.</i> Mounbray - - - - -                                 | 266  |
| Brykenille <i>v.</i> Patton - - - - -                               | 278  |
| Burton and wife <i>v.</i> Northoo - - - - -                         | 400  |
| Chesterton <i>v.</i> Bukmynster - - - - -                           | 354  |
| Clyfford and wife <i>v.</i> Fitz-Waryn - - - - -                    | 316  |
| Cokyngton <i>v.</i> Wylyngton - - - - -                             | 254  |
| Coleville <i>v.</i> the Abbot of Ramsey - - - - -                   | 198  |
| Coston and wife <i>v.</i> Knyght (Alice and Roger) - - -            | 362  |
| Del Isle <i>v.</i> Appelby and others - - - - -                     | 264  |
| Dispenser <i>v.</i> the Earl of Huntingdon and wife - - -           | 96   |
| Drax, the Prior of, <i>v.</i> the Prior of the Trinity of York -    | 96   |
| Escoure <i>v.</i> Sandhurst - - - - -                               | 376  |
| Foreste <i>v.</i> Boulwas - - - - -                                 | 440  |
| Frekilton <i>v.</i> Frekilton - - - - -                             | 298  |
| Fulbourne, a chaplain of, <i>v.</i> Primerole - - - - -             | 82   |
| Godesfeld <i>v.</i> Beaufleur and wife and others - - -             | 16   |
| Gustene <i>v.</i> Sandwich - - - - -                                | 300  |
| Haselholte <i>v.</i> Blake and another - - - - -                    | 154  |
| Hastinges <i>v.</i> [Unnamed] - - - - -                             | 276  |

<sup>1</sup> This table includes only cases in which the name of one party at least is given in the report, or in which the names of the parties have been ascertained from the record,

and not those in which all the parties are represented merely by letters in the reports. A full index of all persons and places mentioned in the volume is printed at p. 517.

|                                                                                    | Page         |
|------------------------------------------------------------------------------------|--------------|
| Henyne v. Audele and wife and others                                               | 358          |
| Houton v. Frost                                                                    | 372          |
| Irton and wife v. Byroun and wife                                                  | 6            |
| King, the, v. the Abbot of Sherborne                                               | 64           |
| King, the, v. the Prior of Pembroke                                                | 147          |
| King, the, v. Walton                                                               | 147          |
| King, the, v. a Guardian of Spiritualities and others                              | 164          |
| King, the, v. the Bishop of London                                                 | 162, 396     |
| King, the, v. [Unamed]                                                             | 200          |
| King, the, v. Segburghe                                                            | 262          |
| King, the, v. Boteler                                                              | 274          |
| King, the, v. the Prior of Hayling                                                 | 302          |
| King, the, v. the Prior of Merton                                                  | 346          |
| Kirkstede, the Abbot of, v. the Countess of Lincoln                                | 189          |
| Lancaster, the Earl of, v. Idle                                                    | 90           |
| Langton v. Saweshulle                                                              | 132          |
| London, the Prior of Christchurch v. [Unamed]                                      | 324          |
| Lunlay v. [Unamed]                                                                 | 135          |
| Maunsel v. Maunsel                                                                 | 412          |
| Melchebourne v. Louth and wife                                                     | 12           |
| Melchebourne v. Louth and wife and another                                         | 182          |
| Mortimer and wife v. Woodhill                                                      | 340          |
| Mulewarde v. Barbour                                                               | 178          |
| Neubotle v. Grenham                                                                | 332          |
| Newenham, the Abbot of, v. Carrou                                                  | 258          |
| Ormond, the Countess of, v. Pluknet                                                | 426          |
| Oxford, the Prior of Austin Friars (plaintiff in Error) v. the<br>Warden of Merton | 56, 332, 475 |
| Pembroke, the Countess of, v. [Unamed]                                             | 456          |
| Pynkney v. Babenham and others                                                     | 191          |
| Randessone v. Barde                                                                | 89           |
| Roos v. Willoughby                                                                 | 36           |
| Roos v. the Abbot of Creak                                                         | 448          |
| Ros v. Graa                                                                        | 388          |
| Russel v. Cantek                                                                   | 434          |
| Sadyngton v. Wyville and another                                                   | 256          |
| St. James, the Warden of the Hospital of, v. [Unamed]                              | 290          |
| St. Paul v. [Unamed]                                                               | 456          |
| St. Quintin v. [Unamed]                                                            | 370, 466     |
| Somery v. Tewkesbury                                                               | 810          |
| Spicer v. the Abbot of Abingdon and others                                         | 252          |
| Sprotleford and another v. Yenge (warrantor)                                       | 292          |
| Stevens v. Causton and another                                                     | 306          |
| Stifrewas and others v. Wedone                                                     | 44           |
| Swynnerton v. Weston                                                               | 316          |

# TABLES.

xlix

|                                                           | Page |
|-----------------------------------------------------------|------|
| Tornarghe v. the Abbot of Furness - - -                   | 103  |
| Urry v. White - - -                                       | 54   |
| Walmesford v. Edenham - - -                               | 70   |
| Warbelton v. the Earl of Gloucester and another - -       | 98   |
| Welbeck, the Abbot of, v. Senmarch or Neumarch - -        | 92   |
| Willoughby and another v. Bachesworth and others -        | 4    |
| York, the Prior of the Trinity of, v. the Prior of Drax - | 172  |
| [Unnamed] v. the Abbot of Beaulieu - - -                  | 380  |
| „ v. the Earl of Huntingdon and wife - - -                | 388  |
| „ v. Rivere - - -                                         | 394  |
| „ v. Vaghan - - -                                         | 352  |

## TABLE OF REFERENCES TO THE LIBER ASSISARUM.

| Year of Reign and Number<br>of Case in the Liber<br>Assisarum. | Page in<br>the present<br>Volume. |
|----------------------------------------------------------------|-----------------------------------|
| 14. Li. Ass. No. 20 - - -                                      | 13                                |
| 15. „ „ 1 - - -                                                | 5                                 |
| „ „ 2 - - -                                                    | 13                                |
| „ „ 3 - - -                                                    | 17                                |
| „ „ 4 - - -                                                    | 177                               |
| „ „ 5 - - -                                                    | 183                               |
| „ „ 6 - - -                                                    | 233                               |
| „ „ 7 - - -                                                    | 263                               |
| „ „ 8 - - -                                                    | 205                               |
| „ „ 9 - - -                                                    | 215                               |
| „ „ 10 - - -                                                   | 291                               |
| „ „ 11 - - -                                                   | 321                               |
| „ „ 12 - - -                                                   | 323                               |
| „ „ 13 - - -                                                   | 327                               |
| „ „ 14 - - -                                                   | 341                               |
| „ „ 15 - - -                                                   | 359                               |
| „ „ 16 - - -                                                   | 387                               |

**TABLE OF REFERENCES TO FITZHERBERT'S  
ABRIDGMENT.**

| Title and Number<br>in Fitzherbert's<br>Abridgment. | Page in<br>the present<br>Volume. |
|-----------------------------------------------------|-----------------------------------|
| Age, 95 -                                           | 237                               |
| Amendment, 57 -                                     | 85                                |
| "    58 -                                           | 309                               |
| Assize, 93 -                                        | 291                               |
| "    94 -                                           | 13                                |
| "    95 -                                           | 323                               |
| "    96 -                                           | 387                               |
| "    111 -                                          | 183                               |
| Attournement, 10 -                                  | 369                               |
| "    11 -                                           | 427                               |
| Attourney, 70 -                                     | 141                               |
| Audita Querela, 10 -                                | 311                               |
| Avowre, 107 -                                       | 101                               |
| "    108 -                                          | 119                               |
| "    109 -                                          | 447                               |
| Ayde, 33 -                                          | 333                               |
| "    34 -                                           | 377                               |
| Briefe, 285 -                                       | 247                               |
| "    286 -                                          | 455                               |
| "    320 -                                          | 99                                |
| "    321 -                                          | 317                               |
| "    322 -                                          | 337                               |
| "    323 -                                          | 371                               |
| "    324 -                                          | 373                               |
| "    325 -                                          | 397                               |
| "    682 -                                          | 167                               |
| Challenge, 113 -                                    | 5                                 |
| Charge, 9 -                                         | 321                               |
| Colour, 47 -                                        | 17                                |
| Comen, 13 -                                         | 187                               |
| Confirmation, 8 -                                   | 95                                |
| Conisans, 41 -                                      | 43                                |
| Corodie, 4 -                                        | 347                               |
| Corone et Plees del Corone, 116 -                   | 263                               |
| Counterplee de Garrante, 5 -                        | 443                               |
| Darren Presentment, 10 -                            | 9                                 |
| "    "    11 -                                      | 401                               |
| Dower, 68 -                                         | 331                               |

# TABLES.

li

| Title and Number<br>in Fitzherbert's<br>Abridgment. | Page in<br>the present<br>Volume. |
|-----------------------------------------------------|-----------------------------------|
| Dower, 69                                           | 333                               |
| „ 80                                                | 355                               |
| „ 81                                                | 359                               |
| Dum fuit infra statem, 1                            | 363                               |
| Error, 7                                            | 205                               |
| Essone, 14                                          | 181                               |
| Estoppel, 234                                       | 167                               |
| „ 236                                               | 75                                |
| „ 237                                               | 275                               |
| „ 238                                               | 293                               |
| „ 239                                               | 317                               |
| Execucion, 61                                       | 7                                 |
| „ 62                                                | 131                               |
| „ 63                                                | 327                               |
| „ 64                                                | 371                               |
| „ 65                                                | 427                               |
| Executours, 80                                      | 345                               |
| „ 81                                                | 389                               |
| „ 90                                                | 345                               |
| Exigent, 13                                         | 439                               |
| Extent, 17                                          | 243                               |
| Faux Jugement, 9                                    | 371 and 467                       |
| Fynes, 49                                           | 297                               |
| „ 50                                                | 345                               |
| „ 51                                                | 353                               |
| Gage Deliverauns, 4                                 | 363                               |
| Garraunte, 27                                       | 389                               |
| Graunte, 62                                         | 459                               |
| Hors de son Fee, 28                                 | 137                               |
| Imprisonment, 19                                    | 371                               |
| Intrusion, 3                                        | 425                               |
| Jointenauncy, 12                                    | 143                               |
| Jour, 21                                            | 389                               |
| „ 22                                                | 389                               |
| „ 26                                                | 55                                |
| Journes Accomptes, 14                               | 147                               |
| Jugement, 130                                       | 93                                |
| „ 131                                               | 87                                |
| „ 132                                               | 277                               |
| „ 133                                               | 227                               |
| „ 134                                               | 371                               |
| Jurisdiction, 24                                    | 153                               |
| Mainprise, 19                                       | 295                               |
| Maintenaunce de Briefe, 55                          | 5                                 |



| Title and Number<br>in Fitzherbert's<br>Abridgment. | Page in<br>the present<br>Volume. |
|-----------------------------------------------------|-----------------------------------|
| Nisi Prius, 22                                      | 51                                |
| Nonsuit, 25                                         | 267                               |
| Par Que Servio, 7                                   | 331                               |
| Peticion, 2                                         | 229                               |
| Pleint, 10                                          | 177                               |
| Proses, 173                                         | 301                               |
| „ 174                                               | 307                               |
| Quare impedit, 160                                  | 165                               |
| Quare non admisit, 5                                | 347                               |
| Relief, 5                                           | 109                               |
| Resceit, 123                                        | 429                               |
| „ 124                                               | 441                               |
| Resomons, 17                                        | 179                               |
| Respond, 3                                          | 75                                |
| Retourne del Vicount, 108                           | 197                               |
| „ „ 109                                             | 131                               |
| Saver de Defaute, 41                                | 249                               |
| Soire Facias, 15                                    | 277                               |
| „ „ 16                                              | 247                               |
| „ „ 115                                             | 243                               |
| Suerte, 2                                           | 429                               |
| Utilagarie, 1                                       | 11                                |
| „ 2                                                 | 271                               |
| Variauns, 70                                        | 311                               |
| View, 96                                            | 251                               |
| Voucher, 21                                         | 81                                |
| „ 22                                                | 331                               |
| „ 23                                                | 357                               |
| „ 111                                               | 81                                |

THE CHANCELLORS, JUSTICES OF THE TWO  
BENCHES, TREASURERS, AND BARONS OF  
THE EXCHEQUER, DURING THE PERIOD OF  
THE REPORTS.

*Chancellors and Keepers of the Great Seal.*

Sir Robert de Bourchier.

Sir Robert Parning, from 27th October, 15 Edward III.  
(1341).<sup>1</sup>

<sup>1</sup> *Rot. Lit. Claus.*, 15 Edw. III., p. 3, m. 22 d.

*Justices of the Court of King's Bench.*

Sir William Scot, Chief Justice.

Sir Robert de Scardeburgh.

Sir Roger de Bankwell.

Sir William Basset, from 28th October, 15 Edward III. (1341).<sup>1</sup>

*Justices of the Court of Common Pleas.<sup>2</sup>*

Sir Roger Hillary, Chief Justice.

Sir William Basset.

Sir Thomas de Heppescotes.

Sir Richard de Kellehulle, from 30th May, 15 Edward III. (1341).<sup>3</sup>

*Treasurers.*

Sir Robert Parning.

William de Cusance, from 28th October, 15 Edward III.<sup>4</sup>

*Barons of the Exchequer.<sup>5</sup>*

Sir Robert de Sadington (Chief Baron.)

Sir William de Everdone.

Sir Thomas de Blaston.<sup>6</sup>

Sir William de Stowe.<sup>6</sup>

Sir William de Brookesby.<sup>6</sup>

Sir Gervase de Wilford.<sup>6</sup>

<sup>1</sup> *Rot. Lit. Claus.*, 15 Edw. III., p. 3, m. 15.

<sup>2</sup> In the order in which the names appear in the "Feet of Fines." It is, however, a fact worthy of notice that Parning acts, apparently, as a Common Pleas Judge, in a case in Easter Term (No. 50), at which time he was Treasurer. It has been pointed out, in 4 Inst. 79, and in 3 Foss's Judges, 477, that after he was appointed Chancellor, his name is found in the Court of Common Pleas in several cases of the year 17 Edw. III. His name occurs in the case No. 45 of Easter Term, 15 Edw. III., which was continued to the 17th year, together with those of Sharshulle and Shardelowe,

who had, in the 17th year, been restored to their places as Justices of the Common Pleas.

<sup>3</sup> *Rot. Lit. Pat.*, 15 Edw. III., p. 2, m. 45.

<sup>4</sup> *Rot. Lit. Pat.*, 15 Edw. III., p. 2, m. 5.

<sup>5</sup> The names are those given in the King's Remembrancer's Remembrance Roll, 15 Edw. III., *Brevia directa Baronibus*, Trin. R. 23 d., 7 July, 15 Edw. III.

<sup>6</sup> The Letters Patent appointing these Barons are cited in the King's Remembrancer's Remembrance Roll, 15 Edw. III., among the *Communia adhuc Recordis* of Hilary Term.



## CORRECTIONS.

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Page 61, line 7, *delete* the comma after "et."

„ 165, „ 16, at the end insert the word "le."

„ 172, note, add the words "or Roxby."

„ 341, add to the marginal note the words "[15, Li. Ass. 14]."

„ 359, add to the first marginal note the words "[15, Li. Ass. 15]."

„ 479, line 21, *for* "neque" *read* "neque."

„ 496, col. 2, line 33, *for* "discrete" *read* "discreet."

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**EASTER TERM**  
**IN THE**  
**FIFTEENTH YEAR OF THE REIGN OF**  
**KING EDWARD THE THIRD**  
**AFTER THE CONQUEST.**

EASTER TERM IN THE FIFTEENTH YEAR OF  
THE REIGN OF KING EDWARD THE THIRD  
AFTER THE CONQUEST.

---

Nos. 1-3.

A.D. 1841. (1.) § Note that in a *Quare impedit*, where the Sheriff  
Quare im- returned, when the Grand Distress was returnable, that  
pedit. the defendant had nothing wherein he could be dis-  
trained, the COURT awarded a writ to the Bishop,  
although the writ of Distress could not be served.

Fine. (2.) § Note that *Pole* levied a fine in words to the  
effect that R. acknowledged the tenements to be the  
right of A., and granted that the same tenements, which  
one B. held for term of life, and which, after the death  
of B., were to remain to C. (should he survive B.) for  
the term of his life, and which, after the death of B.  
and C., were to revert to R. and his heirs, should remain  
to A. and his heirs for ever.—And note that a *Quid juris*  
*clamat* shall be sued against both B. and C.; but he  
who is tenant of the freehold shall attorn, for, pending  
the suit, one may die, and then the other shall attorn.

Fine. (3. § *Gayneford* drew up another fine in words to  
the effect that A. acknowledged the tenements to be the  
right of B., and granted that the same tenements, which  
C. held for his life, of A.'s inheritance, and which, after  
C.'s death, were to revert to A. and his heirs, should,  
after the death of C. and of A. the cognisor (if A.  
survived C.), remain to B. and his heirs for ever.—  
*Quare*, for this fine was not admitted.

DE TERMINO PASCHÆ ANNO REGNI REGIS  
EDWARDI TERTII A CONQUESTU QUINTO  
DECIMO.<sup>1</sup>

Nos. 1-3.

(1.)<sup>2</sup> § *Nota* qe al *Quare impedit*, ou le Vicounte A.D. 1341.  
retourna qil navoit rien oue estre destreint, a la grande Quare im-  
destresse retournable, qe COURT agarda bref al Evesque pedit.  
tout ne poet le bref estre servy.

(2.)<sup>3</sup> § *Nota* qe *Pole* leva une fyne par tiels paroles qe Finia.  
R. conisast les tenementz estre le dreit A., et graunta qe [Fitz.  
mesmes les tenementz, les quex un B. tient a terme de *Quid juris*  
vie, et qe, apres le decees B., a C., [si] survyveroit, duissent *clamat, 9.*  
remeindre pur terme de sa vie, et les quex, apres la  
mort de B. et C., a R. et ses heirs deveirent retourner,  
remeignent a A. et ses heirs a touz jours.—*Et nota*  
*Quid juris clamat* serra suy vers lun et lautre; mes  
celui qest tenant de frank tenement sattournera, qar,  
pendant la suyte, lun purra devier, et donques lautre  
attournera.

(3.)<sup>3</sup> § *Gayn*. tret une autre fine par tieles paroles qe Finia.  
A. conisast les tenementz estre le dreit B., et graunta qe  
mesmes les tenementz, les quex C. tient a sa vie, de son  
heritage, et qe, apres son decees, a lui et ses heirs  
deveirent revertir, apres la mort C. et A. qe conust, sil  
survyve, remeynent a B. et ses heirs a touz jours.—  
*Quære*, qar ceste fyne nest pas resceu.

<sup>1</sup> The reports of this Term are from the Temple MS., the Lincoln's Inn MS., the Harleian MS., No. 741, and the "Additional" MS. in the British Museum, numbered 25,184.

<sup>2</sup> From T. alone. There is an imperfect abridgment of this case in L.

<sup>3</sup> From T. alone.



## Nos. 4-7.

A.D. 1341. (4.) § Assise of Novel Disseisin. The panel was Assise of Novel Disseisin. challenged for that it was arrayed by the device of Simon de Swanland, who was maintainer &c.; and this was enquired of, and found; wherefore an *Aliis Summoneas* was awarded.

Note. (5.) § Note that joint-tenancy by fine was alleged, against which the demandant was not admitted to maintain his writ; wherefore it abated.

Cui in vita. (6.) § *Cui in vita* for the heir.<sup>1</sup> And he claimed the tenements as his right and his inheritance. And it was shown by deed that the wife had only a term for life by her purchase; and this was taken in evidence, and they were at issue upon the traverse of title.

Execution of a Statute. (7.) § Statute Merchant. The Sheriff returned to the writ that the debtor was not found.—*Thorpe*. We pray execution.—*Pole*. We tell you that there is no certificate of such a Statute in the Chancery, and therefore this writ is sued without warrant; and also the writ is suspicious in form.—*Thorpe*. The defendant has not a day; and, if we are suing wrongfully, let him sue a writ to the Justices from the Chancery comprising his

---

<sup>1</sup> This would have been described as *Sur cui in vita* in later times.

## Nos. 4-7.

(4.)<sup>1</sup> § Assise de novele disseisine. Le panel chalenge pur ceo qil fust araie al devys Symond de Swanland, qe fust meinteinour, &c.; et ceo enquis, et trove; par quei *Sicut alias* fust agarde.

A.D. 1341.  
Assisa  
Novæ  
Disseisinæ.  
[15 Li.  
Ass., 1;  
Fitz.  
Challenge,  
113.]

(5.)<sup>2</sup> § Nota qe joeintenance par fyne fust alège, contre quel le demandant ne fust pas resceu de maintenir son bref; par quei il abatista.

Nota.  
[Fitz.  
Mainten-  
ance de  
Briefe,  
55.]

(6.)<sup>3</sup> *Cui in vita* pur leir, quel il clama son dreit et son heritage. Et par fet fust mostre qe la femme navoit qe terme de vie par son purchas; et ceo fust pris en evidence, et sur le travers de title il furent a issu.

Cui in vita.

(7.)<sup>4</sup> § Statut Marchant. Le Vicounte retourna le bref qe le dettour ne fust pas trove.—*Thorpe*. Nous prioms execucion.—*Pole*. Nous vous dioms qil y ad nule certificacion de tiel estatut en la Chauncellerie, par quei ceo bref est suy sanz garrant; et auxi le bref est suspeccionus en forme.—*Thorpe*. Le defendant nad pas jour; et, si nous suoms a tort, sue bref de Chaun-

Execucion  
dune  
estatut.

<sup>1</sup> From T. alone, but compared with the record *Placita de Banco*, Easter, 15 Ed. III. R<sup>o</sup>. 17. It there appears that the assise was brought by Florence, wife of Richard de Wylughby, "taillour," and Joan her sister, against Sarah de Bachesworth, and Thomas de Lowthe and Margaret, his wife, in Middlesex. After interlocutory judgment of *Capiatur assisa*, the bailiff of Thomas and Margaret challenged the array "pro eo quod arraiatum fuit ad denominationem et voluntatem cujusdam Simonis de Swanland, qui est manutentor

"et procurator assise prædictæ  
"pro prædictis Ricardo, Florentia,  
"et Johanna, prout per triatores  
"ad hoc electos et juratos com-  
"pertum est. Ideo panellum præ-  
"dictum amoveatur. Et præcep-  
"tum est Vicecomiti quod de novo  
"summoneat xij, &c., de visneto  
"prædicto, quod sint hic in Octabis  
"Sanctæ Trinitatis parati sacra-  
"mento recognoscere in forma  
"prædicta &c." The new assise  
gave a verdict for the plaintiffs.

<sup>2</sup> From T. alone.

<sup>3</sup> From T. alone until otherwise stated.

## No. 8.

A.D. 1341. case, and upon that let him make his suit for us to show why we sue without reason; for by any other way he cannot be a party.—To this the COURT agreed.—Wherefore he had execution.

Statute  
Merchant.

§ Upon a Statute Merchant, after the first term and before the last term, a certificate was sued, and a writ to take the body issued returnable in the Common Bench. The Sheriff returned *Non est inventus*.—*Thorpe*. We pray execution.—*Pole*. Here is the party, who says that there is no certificate in Chancery.—This could not be allowed without a writ testifying his allegation.—*Quære* what if he had produced a release, &c.?

Darrein  
Present-  
ment.

(8.) § *Darrein Presentment* was brought, on which the plaintiff made his title.—*Pole*. The defendant has brought a *Quære impedit* against him who is plaintiff in the *Darrein Presentment* in respect of the same church, to which writ the Sheriff has returned "the plaintiff would not find pledges." See here a bill by which it is testified that pledges were admitted; and we pray a writ to the Justices assigned [to take assises, &c.] to cause him to answer for his false return.—And the COURT was minded to have granted it.—*Thorpe*. To what intent? The party is not damaged; for even if the writ were well served, no plea would be made on that writ, but all would be on the *Darrein Presentment*.—HILLARY. Certainly, that is true.—Therefore the COURT stayed its hand.—*Thorpe* showed that the church is appendant to the manor of B., and that the manor descended to three parceners, who made partition of the manor, and they were to present to the advowson by turns; and he showed that the plaintiff had the estate of one of the parceners, and the defendants had the estate of the other two parceners; judgment whether the writ lies between them. And, in order to have a writ to the Bishop, he showed that it was the turn of one of the defendants.—HILLARY. Will you have a writ to the Bishop on a writ

## No. 8.

cellerie as Justices compernant son cas, et hors de ceo A.D. 1341. face sa suyte par quei nous suoms contre resoun; qar par autre voie ne poet il estre partie.—*Ad quod. CURIA. consensit.*—Par quei il avoit execucion.

§ En <sup>1</sup>statut marchant, apres la primere terme et avant Statut. le dreyin terme, certificacion fuit suy, et bref. issit de Mar- prendre le corps returnable en comune Bank. Le chant. Le [Fitz. Vicounte returna *Non est inventus.*—*Thorpe.* Nous Execucion. prioms execucion.—*Pole.* Co le partie, qe dit qil nad 61.] nul certificacion en la Chauncellerie.—*Et non allocatur.* sanz par bref qe testmoigne soun dit.—*Quære* sil myst avant releës, &c.

(8.)<sup>2</sup> § Dareyn presentement fust porte, a quei le pleintif Dereyn fist son title.—*Pole.* Le defendant ad porte *Quære Presentement.* *impedit* contre lui qest pleintif en le dreyin presentement de mesme leglise, quel bref est retourne par le Vicounte qe le pleintif ne voleit trover plegges. Veetz cy bille par quel est tesmoigne qe plegges furent resceu; et prioms bref as Justices assignes de lui faire respondre a son faux tourn.—Et COURT le voleit aver graunte.—*Thorpe.* A quel entente? Partie nest pas endamage; qar, tout fust le bref bien servy, nul plee si fra sur cel bref, mes tout serra sur la dareine presentement.—*HILL.* Certes cest verite.—Par quei COURT arestust.—*Thorpe* moustra qe leglise est apendant al manoir de B., et coment le manoir descendi a iij. parceners, et firent purpartie del manoir, et lavoeson a presenter par tourn; et moustra qe le pleintif ad lestat un des parceners, et les defendantz ount lestat des autres ij parceners; jugement si le bref entre eux gise. Et pur aver bref al Evesqe il moustra coment ceo est le tourn lun de defendants.—*HILL.* Volez aver bref al Evesqe sur bref quel vous avez

<sup>1</sup> This report of the case is from L.

<sup>2</sup> From T. alone until otherwise stated. This may be the case Stephen de Irton and Joan his wife

(whose first husband was Vivian de Verdon) v. Geoffrey Byroun and Anabella his wife, *Placita de Banco*, Easter, 15 Edw. III., R. 37.

## No. 8.

A.D. 1341. which, you have [said, should be] abated?—*Thorpe*. We have a *Quare impedit* against him; therefore join the two writs together.—*HILLARY*. The writ of *Quare impedit* is not served; wherefore on that writ judgment for you cannot be given.—*Thorpe*. To prove that it was served we have produced the bill, and we pray a writ to the Justices assigned [to take assises, &c.] to enquire of that false return; and, besides, we are ready to find pledges in this Court, and that is the common course.—*HILLARY*. It is not the common course, and it is not used here, except for poor persons who can give nothing in the Chancery; and we will not cause the King to lose the profits of his seal in the Chancery.—*Thorpe*. Nor will he do so; for, in respect of that *Alia* writ which we pray, the King will have as much for his seal as for an original.—*HILLARY*. That will be by grace; and moreover you cannot have judgment on the writ until it be served.—*Thorpe*. Allow us to come to terms, for we will take a short day.—And note that at the commencement *Derworthy*, for the husband and his wife, made this title, viz., that the advowson was in the seisin of the wife and of her first husband and the heirs of their two bodies, and that they presented the last parson, and so it belonged to them.—*Thorpe*. On such a declaration he cannot have assise, for they speak of an entail, to which they make neither footing nor foundation, as by way of gift, so that this cannot be understood to be a seisin by entail; and the presentation of which they speak can only be understood to have been a presentation by the husband, unless it were by a right which had been expressly shown to have been in the wife, and this is not done; judgment.—And then he waived the point.—*Quære*.—And afterwards the plaintiff showed how by purchase he was sole patron.—And upon the purchase they were at traverse.

Darrein Pre-  
sentment.

§ Vivian de H. and J. his wife brought their writ of

## No. 8.

abatu?—*Thorpe*. Nous avoms un *Quare impedit* vers lui, A.D. 1341. par quei joynes les ij brefs ensemble.—*HILL*. Le bref de *Quare impedit* nest pas servy; par quei sur cel bref jugement pur vous ne se poet faire.—*Thorpe*. Pur ceo nous avoms mys avant bille, et prioms bref as Justices assignez denquere de ceo faux retourn; et, ovesqe ceo, prest sumes de trover plegges ceinz, et cest comune cours.—*HILL*. Ceo nest pas de comune cours, et ceo nest pas use ceinz mes pur pources qe rien ne durront en Chauncellerie; et nous ne voloms pas faire le Roi perdre ses avantages de son seal en la Chauncellerie.—*Thorpe*. Ne ne fra; qar de ceo *Sicut alias* qe nous prioms le Roi avera tant pur son seal come dun original.—*HILL*. Cest serra par grace; et uncore ne poez sur le bref aver jugement tanqil soit servy.—*Thorpe*. Lessez nous a convenir, qar nous prendroms court jour.—*Et nota* qe a comencement *Derworth.*, pur le baroun et sa femme, fist tiel title qe lavoeson fust en la seisine la femme et son primer baroun et les heirs de lour ij corps, qe presenterent la dareine persone, issi apent a eux.—*Thorpe*. Sur tiele demoustrance ne poet il assise aver, qar il parlount dune taille, de quele il ne fount pee ne foundement, come par doun, issi qe ceo ne poet estre entendu seisine par taille; et le presentement dount il parlont ne poet estre dit forsqe le presentement le baroun, sil ne fust par dreit qe fust moustre expressement en la femme, et ceo nest pas fait; jugement.—Et puis il le weyva.—*Quære*.—Et puis le pleintif moustra coment par purchas il fust seul avowe.—Et sur le purchas il sont a travers.

§ Fyvyen<sup>1</sup> de H. et J. sa femme porterent lour bref

Dreyne  
Presentement.  
[Fitz.  
Darren  
Presentment,  
10.]

<sup>1</sup> This report of the case is from L. alone. As to the names see p. 7, note 2.

## No. 9.

A.D. 1341. *Darrein Presentment* against J. de Irton and A. his wife, and made title in that they were seised of the advowson, to hold to them and to the heirs which Vivian should beget on the body of Joan, and they presented the last &c.—*Thorpe*. That is not a title of estate tail without affirming right in the donor.—This objection was not allowed.—*Thorpe* showed how the manor of T., to which the advowson is appendant, descended to three parceners, and how the defendants had the estate of two, and the plaintiffs the estate of the third, and he demanded judgment whether such a writ lies between parceners, and he made title in order to have a writ to the Bishop.—*Ham*. We do not admit that as true; but it is quite true that the three sisters were seised of the manor of T. and of the advowson. And *Ham*. alleged, without producing any deed, that they had divested themselves of all their parts of the lands, each severally, and of so much of the advowson as belonged to each.—*Thorpe*. Those whom you allege to have divested themselves of parts of the land continued their estate and died seised.—This could not be allowed without making answer as to the divesting.—Afterwards the divesting was traversed.—And the other side joined issue thereon.

**Account.** (9.) § Note that on a writ of Account one was outlawed, wherefore *Capias* issued, and the Sheriff brought one in custody before the Justices in the Term next preceding, who alleged that he had a different surname from the person who was outlawed, so that he was a different person, &c. And the plaintiff admitted it. And it was said by the COURT that, although the plaintiff, whose suit was being tried, might be willing to admit that matter, which might be to the King's disadvantage, they had nothing to do with it. But because he had a writ out of the Chancery on his case, and on account of the mischief, they would enquire. Therefore a writ issued to the Sheriff. And now no

## No. 9.

de dreyn presentement vers J. de Irtone et A. sa femme, A.D. 1341. et firent title de ceo qils furent seisi del avoeson a eux et as heirs quex Fyvyen engenareit de corps Johane, et presenterent dreyn &c.—*Thorpe*. Ceo nest pas title destat taille sanz affirmer dreit en le donour. — *Et non allocatur*.—*Thorpe* moustra coment la manere de T., a qui lavoweson append, descendi a iij parceners, et coment le defendants et avoient estat dez deux, et les pleyntifs estat de la terce, et demanda jugement si tiel bref entre parceners ygist, et fist title pur aver bref a levesqe.—*Ham*. Nous ne conussoms pas cella par verite; mes bien est verite qe lez iij sores furent seisi del maner de T. et del avoweson, et moustra coment il avoit de[mys]<sup>1</sup> totes des partiez sez terres chescun severalment, et de ceo qe afferoit a chescun de lavoweson, sanz moustrer fait.—*Thorpe*. Ceux qe vous ditz qe ceo dymistrent des parties des terres continuerent lour estat et devyerent seisi.—*Et non allocatur*, sanz respons a la demyse.—Puis la demyse fut traverse.—*Et alii e contra, &c.*

(9.)<sup>2</sup> § Nota qen un bref dacompt un fust utlage, Accounts. par quei *Capias* issit, et le Vicounte mena un en garde [Fitz. Ulagarie, 1.] devant Justices lautre terme proschein devant, qe aleggea qil avoit autre surnoun qe celui qe fust utlage, issi qil est autre persone, &c. Et le pleintif le conust. Et par COURT fust dit qe, tout voleit le pleintif, qi suyte est trie, conustre cele chose, qe poet estre en desavantage le Roi, il nont quei faire. Mes pur ceo qil ad bref de Chauncellerie sur son cas, et pur le meschief, il voleint<sup>3</sup> enquere; par quei bref issit a Vicounte. Et ore nul

<sup>1</sup> The passage seems corrupt. The reading in Fitz. is estat de.

<sup>2</sup> From T. alone. See No. 71 of M. 14, E. 3.

<sup>3</sup> T., ne voleint.



## No. 10.

A.D. 1341. writ is returned; wherefore, at the prayer of the prisoner who remains in custody, an *Alias* writ is now granted.

Assise of  
Novel  
Disseisin.

(10.) § Assise of Common of pasture.—*Thorpe*. There ought not to be an assise, for the land in which he claims the common, and the land to which he claims that the common is appendant, were in the hand of one A. in the time of the King the father of the present King, which A. enfeoffed us of the one land and you of the other; judgment whether for common appendant, &c.—*Stouford*. We were seised of it as appendant; for your plea is a traverse; and this has been heretofore adjudged in a similar case.—And, according to the passing opinion of the COURT, this is a bar.—*Quære*.—*Blaik*. We tell you that the land to which we claim the common to be appendant is ancient land, to which, before the seisin of A., common was always appendant; and we tell you that N. Vesci tenant of the land to

## No. 10.

bref est retourne; par quei, a la priere le prisone qe A.D. 1341. demoert en garde, *Sicut alias* est ore graunte.

(10.)<sup>1</sup> § Assise de comune de pasture.—*Thorpe*. Assise Assisa  
ne deit estre, qar la terre en quele et a quele il cleyme Novæ  
la comune estre apendant furent en la mayn un A. en Disseisinæ.  
temps le Roi pere le Roi qor est, le quel feffa nous de [14 Li.  
lun terre et vous de lautre; jugement si de comune Ass., 20;  
apendant.<sup>2</sup>—*Stouf*. Seisi come apendant; qar vostre 15 Li.  
plee est a travers; et ceo ad este ajuge devant ses Ass., 2;  
houres en autiel cas.—Et par passante oppinion de Court Fitz.  
cest barre.—*Quere*.—*Blayk*. Nous vous dioms qe la Assise,  
terre a quele nous clamoms la comune estre appendant 94.]  
est ancienne terre, a quele, devant la seisine A., de tout  
temps comune fut apendant; et nous dioms qe N. Vesci

<sup>1</sup> From T. alone until otherwise stated, but corrected by the record, *Placita de Banco*, Easter, 15 Edw. III. R. 2, d. It there appears that the action was brought by Robert de Melchebourne, of Herfeld (Harefield in the County of Middlesex), against Thomas de Louth and Margaret, his wife. His plaint was to the effect that they disseised him of common of pasture, in 100 acres of moor, for all manner of cattle, every year, throughout the whole year.

<sup>2</sup> The plea and subsequent proceedings in this important case appear on the roll in the following form:—"Et Thomas et Margareta  
"veniunt et dicunt quod tenementa  
"in quibus clamat predictam com-  
"munam &c. sunt quinquaginta et  
"tres acras terræ, quæ sunt modo  
"terra arabilis, et tenementa ad quæ  
"&c. sunt unum cotagium et una acra  
"terræ, quæ quidem terra in qua &c.  
"et similiter tenementa ad quæ &c.  
"simul et semel fuerunt in seisinâ  
"cujusdam Ricardi de Bache-

"wothe, domini villæ de Herfeld,  
"tempore Edwardi Regis avi do-  
"mini Regis nunc, quo tempore  
"nulla communâ potuit esse per-  
"tinens prædictis tenementis, &c.  
"Et dicunt quod idem Ricardus de  
"prædictis tenementis ad quæ &c.  
"feoffavit ipsum Robertum ten-  
"endis sibi et heredibus suis in  
"perpetuum, et de prædicta terra  
"in qua &c. feoffavit quendam  
"Thomam de Louth, cujus statum  
"ipsi Thomas et Margareta versus  
"quos &c. habent in eadem terra  
"Et petunt judicium si prædictus  
"Robertus clamare possit com-  
"munam in prædicta terra tanquam  
"pertinentem, &c.—Et Robertus  
"dicit quod prædicta tenementa ad  
"quæ clamat prædictam Ricardus de  
"nam, &c. sunt unum mesuagium  
"et tres acras terræ, quæ quidem  
"tenementa fuerunt in seisinâ cu-  
"jusdam Nicholai le Veyse diu  
"antequam prædictus Ricardus de  
"Bacheworthe aliquid habuit in  
"eisdem, quo tempore idem Nich-

## No. 10.

A.D. 1841. which, &c., had common, &c., in &c., and the tenant has common for the land to which we claim the common to be appendant; judgment whether by the seisin of A. you can extinguish this common.—*Thorpe*. We do not acknowledge that it is ancient land; and we demand judgment, since it is admitted that both lands were in one and the same hand and so the common was extinguished, whether, &c.—*HEPPESCOTES*. Many learned men have adjudged the reverse, and have awarded the assise in a similar case.—And afterwards, in Trinity term, *HILLARY* awarded the assise.—Afterwards, in Michaelmas Term, in the 15th year, it was found by the Assise that this was ancient land, and that Nicholas Vesci was seised of the common, but he had nothing in the land to which the common, &c., except at the will of the lord.—*HILLARY*. By the plea the reverse is held as not denied by the tenant; for when the plaintiff made himself title because it was ancient land and Nicholas was seised, before the time when these lands were in the hand of one person, of common appendant, and all the ter-tenants at all times previously, and thereupon the assise was prayed, and the tenant said nothing, wherefore the assise was awarded,—it was held as not denied that Nicholas was seised of the land to which the common, &c., as of freehold, and there was nothing to enquire by the Assise but whether he was seised of

And note that, when one holds land of another at will, he cannot claim common as appurtenant or appendant to his land, but only as a pasture, by law, as appears in this plea.

“olans habuit communam in prædicta terra tanquam pertinentem, &c. Et dicit quod prædictus Nicholaus et omnes antecessores sui, et omnes tenentes terrarum et tenementorum illorum, a tempore a quo non extat memoria habuerunt communam in prædicta terra tanquam pertinentem, &c., et similiter ipse Robertus seisitus fuit de communâ in prædicta terra tanquam pertinente

“ad tenementa sua prædicta quousque prædicti Thomas et Margareta ipsum inde disseisiverunt. Et petit iudicium si ipse per seisinam prædicti Ricardi eorundem tenementorum ab assisa præcludi debeat in hac parte, ex quo prædicta tenementa ad quas &c. sunt antiqua tenementa ad quas communâ pertinet, &c.”

After this there were several adjournments, of which the last was

No. 10.

tenant de la terre a quel, &c., avoit comune, &c., en, &c., A.D. 1341 et le tenant ad comune de la terre a quel nous clamoms la comune estre appendant; jugement si par la seisine A. puisses ceste comune esteindre.—*Thorpe*. Nous ne conisoms pas qe cet ancienne terre; et demandoms jugement, del houre qe cest conu qe lun terre et lautre fust en uny mayne issi adonques la comune esteint, si, &c.—*HEP*. Ment sage ount ajuge le revers, et ount agarde lassise en tiel cas.—Et puis *Termino Trinitatis*, *HILL* agarda lassise. — *Postea, termino Michaelis anno xv*,<sup>1</sup> trove fust par assise qe ceste ancienne terre, et qe Nichol Vesci fust seisi de la comune, mes il navoit en la terre a qi la comune, &c., mes a la volunte le seignur.—*HILL*. Par plee le revers est tenu a nient dedit del tenant; qar quant le pleintif se fist tittle pur ceo qe ceo fust ancienne terre et qe N. fust seisi, avant le temps qe celes terres furent en uny mayn, de comune apendant, et touz les terres tenantz de tout temps avant, et sur ceo lassise prie,<sup>2</sup> et le tenant tuyt,<sup>3</sup> pur quei lassise fust agarde, fust tenu a nient dedit qe Nichol fust seisi de la terre a qi la comune, &c., come de frank tenement, et rien fust a enquere par assise mes le quel il fust seisi de la comune come

Et nota quant un homme tient dun altre, a la volunte, terre, il ne put clamer comune com appurtenant ou appendant a lour terre, mes come un pestre, par la ley, ut apparet in isto placito.

to the Octaves of Trinity following:—

“Ad quem diem veniunt tam  
“prædictus Robertus quam præ-  
“dicti Thomas et Margareta per  
“attornatos suos Et quia videtur  
“Curie hic quod, non obstante  
“responso prædictorum Thomæ  
“et Margarete, in hoc casu proce-  
“dendum est ad assisam istam,  
“Ideo capiatur assisa, sed ponitur  
“in respectum hic usque in Oc-  
“tabas Sancti Michaelis, pro de-  
“fectu recognitorum, quia nullus  
“venit. Ideo Vicecomes habeat  
“corpora, &c. Et apponantur

“sex tales, &c. Ad quem diem  
“prædictus Robertus de Melche-  
“bourne non est prosecutus. Ideo  
“consideratum est quod prædicti  
“Thomas et Margareta eant inde  
“sine die. Et prædictus Robertus  
“et plegii sui de proseguendo sunt  
“in misericordia, &c. Querantur  
“nomina plegiorum, &c.”

<sup>1</sup> The conclusion of this report occurs also in L., but as of Michaelmas Term next following. The marginal note appears in that MS. alone.

<sup>2</sup> L., prise.

<sup>3</sup> tuyt is not in L.

## No. 11.

A.D. 1341. the common as appendant or not.—*Thorpe*. He could not be seised of it as appendant when he held at the will of the lord, on whose soil the common is supposed to be, the freehold to which he is supposed to have the common appendant, for then both were in the hands of the lord, and the profit which Nicholas had was only the pastura.—*HILLARY* said as above; and the COURT agreed with him.—*Thorpe*. Nothing is held as not denied by the tenant in the case of an assise when the plaintiff makes himself a title, for enquiry shall be had thereof.—And afterwards the plaintiff *non pros*.

Assise of  
Common  
appurte-  
nant.

§ In assise of Common appurtenant against Thomas de Louthe and Margaret, his wife, *Thorpe* said:—Both the one land and the other were in the seisin of Richard de B., who was then lord of the vill, in the time of King Edward father of the present King, at which time the common was extinguished, and that Richard enfeoffed us of the land in which, &c., and the plaintiff of the land to which, &c.; judgment, &c.—*Blaik*. Before that seisin the one land was in the seisin of one A., and the other in the seisin of one B., at which time the common was appurtenant, and A. and his ancestors were seised of the common as appurtenant during all time previously; judgment, &c.—*Thorpe*. Since you have admitted the seisin of the lord as to both lands, when the common was necessarily extinguished, judgment.—*Blaik*. During all time previously the seisin of the lord, &c.<sup>1</sup>

Assise of  
Novel  
Disseisin.

(11.) § Assise of Novel Disseisin.—*Thorpe* (for the husband and his wife, tenants). There ought not to be assise, for we tell you that James Beauflour, the father of John against whom the assise is brought and who now pleads in bar as husband, died seised of the same tenements; and after his death the tenements descended to John, as son and heir, who was then under age; wherefore Emma his mother, by reason of nurture, seized the same tene-

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<sup>1</sup> Compare this case with No. 10 of Trinity Term next following.

## No. 11.

apendant ou nient.—*Thorpe*. Il ne purra estre seisi A.D. 1341.  
 come apendant qant il tient a la volunte le seignur, en  
 qi soil la comune devereit estre, le<sup>1</sup> frank tenement a  
 quel il duist aver la comune apendant, qar donques fust  
 lun et lautre en la mayne le seignur, et le profist qe N.  
 avoit ne fust forsqe pestre.—*HILL*. *Ut supra*; et a lui  
 COURT acorda.—*Thorpe*. Rien est tenu a nient dedit  
 del tenant en cas dassise qant pleintif se fait tittle, qar  
 il serra enquis.—*Et postea querens non prosecutus [est.]*

§ En<sup>2</sup> assise de comune appartenant vers Thomas de Louth Assise de  
Comune  
appartenant.  
 et M.,<sup>3</sup> sa femme, *Thorpe*:—La un terre et lautre furent en la  
 seisine Richard de B., qe fuit adonques seignur de la ville, en le  
 temps le Roy E. pere, a quel temps la comune fuit esteynt, le  
 quel Richard enfeffa nous de la terre en &c., et le pleyntif de  
 la terre a quel, &c.; jugement, &c.—*Blaik*. Avant cele seisine  
 le un terre fut en la seisine un A., et lautre en la seisine un B.,  
 a quel temps la comune fut appartenant, et A. et ses auncestres  
 seisi com appartenant tot temps devant; jugement, &c.—  
*Thorpe*. Del houre qe vous avez conu la seisine le seignur  
 de les ij terres, a quel temps la comune fut necesserement  
 esteynt, jugement.—*Blaik*. Durante tot temps avant la seisine  
 le seignur, &c.

(11.)<sup>4</sup> § Assise de novele disseisine.—*Thorpe*. Assise Assise  
Novae  
Disseisinae.  
[15 Li.  
Ass., 3  
Fitz.  
Colour,  
47.]  
 ne deit estre, pur le baroun et sa femme tenantz, qar  
 nous vous dioms qe James Beauflour, pere Johan vers  
 qi lassise est porte et qe ore plede en barre cum barun,  
 morust seisi de mesmes les tenementz, apres qi mort les  
 tenementz descenderent a Johan come fitz et heir deinz  
 ago adonques, par quei Emme<sup>5</sup> sa mere, par resoun de

<sup>1</sup> L., qar le.

<sup>2</sup> This report of the case is from  
L. alone.

<sup>3</sup> L., J.

<sup>4</sup> From T. alone until otherwise  
stated, but corrected by the record,  
*Placita de Banco*, Easter, 15 Ed.  
III., R<sup>o</sup>. 48, d. It there appears that  
the action was brought in respect of  
lands, &c., in Middlesex, by John de

Godesfeld (Gosfield) against John  
Beauflour and Margery his wife,  
Ralph de Lucham Jones-aprentiz  
Beauflour (*i.e.*, John Beauflour's  
apprentice), Stephen de Berkyng  
Jones-servant Beauflour (*i.e.*, John  
Beauflour's servant), John Pile, John  
Litelson, goldsmith, and Almaria  
late wife of Adam atte Lec.

<sup>5</sup> T., A.

## No. 11.

A.D. 1341. ments to the use of John, and took to husband J. de Godesfeld the present plaintiff, who during the nonage aliened to one Ethelreda de Hildresham, and took back an estate to him and his heirs; and John, when of age, freshly ousted him; judgment whether on that possession he ought to have assise.—*Pole*. The wife does not answer, nor by such a title can she claim; judgment; and we pray the assise.—*Thorpe*. When John had entered, in the manner above mentioned, he aliened to one Almaria, and took back an estate to him and Margery his wife; judgment, &c.—*Pole*. The wife is a stranger, in whose mouth the plea does not lie, and the ouster is admitted; we pray the assise for the damages.—*Thorpe*. Then you must show the fact to be such. And suppose a bastard or a younger son bring an assise against the eldest son and another or one who has purchased, shall they not plead privity in blood?—And *Pole*, on account of the opinion of the COURT, did not dare to abide judgment, but said:—It is very true that James Beauflour died seised, at which time John who pleads in bar—whom we do not admit to be son of James—was of full age, and the same tenements descended to William as son and heir, who was under age; and, because it is socage, his mother seized the tenements by reason of nurture, and took to husband J. de Godesfeld the present plaintiff, during whose seisin William, when of full age, released all his right, and so the plaintiff was seised until by the others disseised. And we tell you that John, who answers as tenant, was never seised, except by his disseisin, after the time when W., son and heir of James, had released.—*Thorpe*. Your plea is double; one is that you traverse our statement when you say that John

## No. 11.

nurture, seisi mesmes les tenementz al uys Johan, et prist A.D. 1341.  
 baroun J. de Godesfeld<sup>1</sup> qore se pleint, le quel durant la  
 noun age aliena a un Ethelrede de Hildresham<sup>2</sup> et  
 reprist estat a lui et ses heirs; et Johan, quant il fust  
 dage, frechement loust; jugement si de cele possession  
 deive assise aver.—*Pole*. La femme ne respont pas, ne  
 par tiel tittle ne poet clamer; jugement; et prioms lassise.  
 —*Thorpe*. Quant Johan fust entre par la manere, *ut*  
*supra*, il aliena a un Almarie<sup>3</sup> et reprist estat a ly et  
 M.<sup>4</sup> sa femme; jugement, &c.—*Pole*. La femme est  
 estrange, en qi bouche le plee ne gist pas, et louser est  
 conu; nous prioms assise de damages.—*Thorpe*. Donques  
 il vous covient moustrer le fet estre tiel. Et jeo pose qe  
 le bastard ou le fitz puisne porte assise vers leisne et un  
 autre ou quel ad purchase, ne pledrent il la privete du  
 sank?—Et *Pole*, *propter opinionem* CURIAE, nosa demurer,  
 mes dit qe bien est verite qe James Beauflour morust  
 seisi, a quel temps Johan qe plede en barre, qe nous ne  
 conisoms pas estre fitz James, fust de pleine age, et  
 mesmes les tenementz descenderent a W. come fitz et heir  
 deinz age; et, pur ceo qe cest sokage, sa mere seisisit les  
 tenementz par resone de nurture, et prist a baroun J. de  
 Godesfeld<sup>1</sup> qore se pleint, en qi seisine W., a son pleine age,  
 releassa tout son dreit, et issi fust il seisi tanqe par les  
 autres disseisi. Et vous dioms qe Johan, qe respont come  
 tenant, ne fust unques seisi, forsqe par sa disseisine, puis  
 cel temps qe W., fitz et heir<sup>5</sup> James, avoit relesee.—  
*Thorpe*. Vostre plee est double: un qe vous traversez  
 nostre dit la ou vous dites qe Johan fust de plein age

<sup>1</sup> T., Godesfeld. In some parts of the record it is doubtful whether the spelling is Godeffeld or Godesfeld, in others it is clearly Godesfeld.

<sup>2</sup> T., B., instead of Ethelrede de Hildresham.

<sup>3</sup> T., un T. The alienation was

to Almaria, late wife of Adam atte Leye, one of the defendants, as appears in the record.

<sup>4</sup> T., K. The estate was to John Beauflour, and Margery his wife, and their heirs.

<sup>5</sup> T., first heir, instead of fits et heir



## No. 11.

A.D. 1841. was of full age when James died; the other is that you make W. to be son and heir of James.—HILLARY to *Pole*. Suppose that John was the elder son, and that William was the younger, and that the mother entered as claiming to the use of William the younger; do you think that thereby the freehold would be in William? It would not be in him, but in John the elder. And, if William released, do you think that thereby John would be ousted from entry? —*Blauk*. Sir, if John was of full age when James died, and the mother entered as claiming to the use of William, the freehold would be William's; and if he released, when of full age, to his mother's husband, I say that John could not enter.—HILLARY. You make title by release; therefore you must affirm the freehold by title in him who released, for there is a difference between a release and a feoffment.—And then *Blauk* made protestation that John was of full age when James died. And (said he) we tell you that William Beaufleur enfeoffed us, and so we were seised until disseised by the defendants.—*Thorpe*. Heretofore he made title by a release from that same William, and it shall be for judgment whether by such a deed so proved as not to fall within the cognisance of the country, he can arrive at the assise; and also that title is contrary to his first title; for his title by release supposes that he himself was seised at the time of the making thereof, and this is the reverse as it supposes change of possession.—*Stouford*. You said at first that we had not made a title, and now we make one.—*Thorpe*. I took exception to the duplicity of your answer, in that you pleaded in destruction of the bar and made title also, and you would not conclude on one alone, and it does not, therefore, follow that you can take a new title contradictory to the first.—HILLARY. If plaintiff make an insufficient title, and exception be taken to it, and plaintiff do not abide judgment thereon, he can

## No. 11.

quant James morust, un autre qe vous faites W. fitz et A.D. 1341. heir James.—*HILL a Pole.* Jeo pose qe Johan fust fitz eisme, et W. puisne, et qe la mere entra en clamant al oeps W. le puisne; quides vous par taunt qe le frank tenement serreit en W.? Noun serreit, mes en Johan leisme. Et si W. releessa, quides vous par tant qe Johan fust ouste dentrer?—*Blayk.* Sire, si Johan fust de pleine age quant James morust, et la mere entra et clamant al oeps W., le frank tenement serreit a W.; et, sil releessa, a son pleine age, al baroun sa mere, jeo die qe Johan ne purreit pas entrer.—*HILL.* Vous faites title par relees, par quei il covient affermer le frank tenement par title en celui qe releessa, qar il est autre de relees et de seffement.—Et puis il fist protestacion qe Johan fust de pleine age quant James morust. Et vous dioms qe William Beauflour nous enfeffa, issi fumes seisi tanqe par lui disseisi.—*Thorpe.* Avant ses houres fist il title par relees mesme celui W., qe serreit en jugement si, par tiel fet si prove qe ne chiet pas en conisance du pais, il purra al assise attendre; et auxi cel title est contrarie a son primer title; qar son title par relces suppose lui mesme estre seisi a temps de la confeccion, et cecy est le revers qe suppose mutacion de possession.—*Stouf.* Vous deistes primes qe nous avoms pas fait title, et ore nous fesoms.—*Thorpe.* Jeo chalenge la doublete de vostre respouns, de ceo qe vous pledastes en destruccion du barre et faites title auxi, et ne volez concluser sur lun, et de ceo nensuyt il pas qe vous poetz prendre novel title contrariant al primer.—*HILL.* Si pleintif fait title meyns sufficeant, et ceo soit chalenge, et pleintif sur ceo ne demoert pas en jugement, il le poet weyver

## No. 11.

A.D. 1341. waive it and make a new title.—*Thorpe*. I do not think so.—Then he rehearsed his bar, and the title which the plaintiff made by the feoffment of William Beauflour, and said :—Sir, you see clearly how he has admitted that James Beauflour died seised, and heretofore he made himself a title by the release from William son and heir of James, as appears above ; we tell you that John Beauflour is the elder brother of William, and, inasmuch as he makes himself a title, the bar is held as not denied, viz., that John is son and heir of James ; and we tell you that the release and feoffment of which he has spoken are all one deed ; and we demand judgment, since the deed of William our younger brother, and so our tollor, could not have the effect of barring us from freshly entering when of our full age, as we have alleged, whether by his deed you can affirm a title in your person against us.—*Pole*. The estate which you admit for us now by the feoffment from William Beauflour is contradictory to your bar, by which you admitted in our favour another estate, and thus you have waived your bar ; wherefore we pray the assise at large.—*HILLARY*. You made a title which he has destroyed : wherefore see how you will have the assise.—And *Thorpe*, in order to enlarge his plea, rehearsed how John de Godesfeld, the plaintiff, was seised as above, by reason of nurture, in right of his wife, and so (said *Thorpe*) he was bound to make restitution of our inheritance to us in full, when we came of age, and William our younger brother, as our tollor, entered with his consent and enfeoffed him, and we at our full age, as above, ousted him ; judgment whether by that feoff-

## No. 11.

et faire novel title.—*Thorpe*. Ceo ne croy jeo pas.— A.D. 1341.

Puis il rehercea son barre, et le tittle qe le pleintif fist par le feffement W. Beauflour, et dit, Sire, vous veez bien coment il ad conu qe James Beauflour morust seisi, et autrefoitz se fist tittle par<sup>1</sup> le relees W. fitz et heir James, *ut supra patet*; nous vous dioms qe Johan Beauflour est eisme de William, et, par tant qil fait tittle, le barre est tenu a nient dedit, saver qe Johan est fitz et heir James; et vous dioms qe le relees et le feffement dont il ad parle, tout est un fet; et demandoms jugement, del houre qe le fet W. nostre frere puisne, et issi nostre tollour, ne nous poet chier en barre qe nous frechement a nostre age come nous avoms alege poams entrer, si par son fet puissez tittle en vostre persone vers nous affermer.—*Pole*. Lestat qe vous nous conises a ore par le feffement W. Beauflour est contrariant a vostre barre, par quel vous nous conisastes autre estat, et issi avez weyve vostre barre; par quei nous prioms lassise a large.—*HILL*. Vous avez fait tittle, quel il ad destruit; par quei veez coment vous averez assise.—Et *Thorpe*, pur enlarger son dit, reherce coment Johan de Godesfeld,<sup>2</sup> qe se pleint, fust seisi, *ut supra*, par resone de nuture, en le dreit sa femme, et issi fust tenuz de faire restitution a nous de nostre heritage pleinement a nostre age, et, par son assent, W. nostre frere puisne, come nostre tollour, entra et lui feffa, et nous a nostre pleine age, *ut supra*, lui oustames; jugement si par ceo feffement puisse

<sup>1</sup> T., et.

<sup>2</sup> T., Beauflour, instead of de Godesfeld.

## No. 11.

A.D. 1341. ment he can affirm a title of freehold in his person.—*Pole*. William had been seised years and days when John Beauflour was of full age, and William enfeoffed us, and we were also seised by the feoffment years and days, until he disseised us, without this that he ever had any other estate except by the entry upon us ; judgment ; and we pray the assise for the damages.—They were adjourned to the Quinzaine of Trinity.—On that day *Pole* rehearsed &c., and offered to aver as above.—*Thorpe*. He does not deny that we are the elder brother of William, by whose feoffment he makes himself a title, nor that he was our younger brother, nor that our ancestor died seised, in which case the seisin of the guardian by law was of our freehold ;<sup>1</sup> and we tell you that he made our younger brother William enter upon him, with his own consent, and took a feoffment from William, whereupon we entered ; judgment whether on that possession you ought to have assise.<sup>2</sup>—KELSHULLE (JUSTICE).

<sup>1</sup> This is better expressed in the record :—*Quæ quidem possessio in jure intelligi debet seisinâ in persona ipsius Johannis Beauflour, et sic idem Johannes Beauflour, ut filius antenatus et heres prædicti Jacobi, statim post mortem prædicti Jacobi patris sui, de jure fuit seisitus de prædictis tenementis, licet non de facto.*

<sup>2</sup> The portion of the record subsequent to this point is as follows :—*Et Johannes de Godesfeld, non cognoscendo quod prædictus Jacobus obiit seisitus de prædictis tenementis, dicit quod ad hoc quod prædicti Johannes Beauflour et Margeria superius allegant ipse non habet necesse respondere, ex quo ipse Johannes de Godesfeld et similiter prædicti Johannes Beauflour et Margeria omnino sunt extranei in hac parte, et in ore*

*ipsorum Johannis Beauflour et Margeriæ non jacet placitare propinquitatem sanguinis, &c., maxime cum in ore viri et mulieris non jacet nisi unica responsio, et prædicta uxor, si sola esset, non haberet tale placitum, nec per consequens vir et uxor in hoc casu. Et, ex quo prædicti Johannes Beauflour et Margeria superius expressè cognoverunt quod ipse Johannes de Godesfeld fuit seisitus de prædictis tenementis per feoffamentum prædicti Willelmi, super qua possessione prædictus Johannes Beauflour intravit in tenementis prædictis, quod non potest dici aliud quam disseisina facta ipsi Johanni de Godesfeld, petit judicium et assisam de damnis, &c. Et Johannes Beauflour et Margeria dicunt quod prædictus Johannes de Godesfeld ad faciendum aliquam protesta-*

## No. 11.

title de frank tenement en sa persone affermer.<sup>1</sup>—A.D. 1341.

*Pole.* W. fust seisi anz et jours quant Johan Beaufleur fust de pleine age, et nous feffa, et nous seisi et par le feffement aunz et jours, tanqil nous disseisi, sanz ceo qil avoit unqes autre estat forsque par lentre sur nous; jugement, et lassise pur damages.—*Adjournantur in xv. Trinitutis*; a quel jour *Pole* rehercea, &c., tendi daverer *ut supra*.—*Thorpe.* Il ne dedit qe nous sumes eisne de William par qi feffement il se fait title, ne qil fust nostre frere puisne, ne qe nostre auncestre morust seisi, en quel cas la seisine le gardein par ley fust nostre frank tenement; et vous dioms qe par son assent il fist W. nostre frere puisne entrer sur lui, et prist feffement de lui, sur quei nous entrames; jugement si de cel possession devez aver assise.—*KELS.*

<sup>1</sup> Thorpe's words appear to be represented in the record (after a statement that William was the younger brother) by the following:—*Et dicunt quod prædictus Johannes de Godesfeld, per collusionem inter ipsum Johannem de Godesfeld et prædictum Willelmum habitum, cepit quoddam feoffamentum de ipso Willelmo de eisdem tenementis, eodem Willelmo ad tunc infra ætatem existente, et sic idem*

*Willelmus fuit ablato et disseisor ipsius Johannis Beaufleur, et statim, quando ipse Johannes Beaufleur pervenit ad plenam ætatem, ipse intravit in prædictis tenementis. Et petunt judicium si prædictus Johannes de Godesfeld per aliquod feoffamentum prædicti Willelmi, fratris sui junioris et sui ablatois, ut prædictum est, assisam inde versus eos habere debeat.*

## No. 11.

A.D. 1341. Now you do not maintain you bar.—HILLARY. No; when he makes title, it is only necessary to destroy his title.—And then HILLARY reverted to the bar, and said that the first plea was not a bar, because it does not lie in the mouth of the wife, wherefore there was nothing to do but to take the assise; for even though plaintiff make himself a title when the tenant has previously pleaded to the assise, the COURT will take the assise; for it is for the COURT, if it appear by the record that at any stage of the plea they went to the assise, to take the assise, without having regard to acceptance by the parties.—*Thorpe*. I say that is the course of law when the tenant pleads in an assise a plea which perchance is to the assise, if the party prayed the assise and abode judgment thereupon; but when the tenant makes his conclusion in bar of the assise, and the plaintiff, accepting that for a bar, makes himself another title, he shall never go back so as to say that it is not a bar, nor will the Court.—But this statement the COURT entirely denied.—And *Thorpe* said further that by making title the plaintiff had accepted as much as was comprised in the bar.—*Blayk*. Surely that is not law; when he makes himself a collateral title, not referring to the bar, nothing in the bar is by law held as

tionem in hac parte admitti non debet, quia dicunt quod ipsi Johannes Beauflour et Margeria superius in placito isto placitaverunt in exclusionem assise prædictæ de hoc quod prædictus Jacobus obiit seiscitus de prædictis tenementis et quod prædicti Johannes de Godesfeld et Emma habuerunt custodiam, &c., ratione nutrituræ, &c., et quod ipse Johannes Beauflour fuit filius et heres ipsius Jacobi, quod quidem placitum prædictus Johannes de Godesfeld acceptavit pro barra, &c., et

sic in lege teneri debet pro non dedicto quin prædictus Jacobus obiit seiscitus de prædictis tenementis, &c., et postea idem Johannes de Godesfeld fecit titulum, &c., de feoffamento prædicti Willielmi, &c., ad tunc nullam faciendo protestationem, &c. Ad quem titulum iidem Johannes Beauflour et Margeria tunc responderunt, ut superius continetur, et ceperunt plures dies per adjournamentum super allegationibus suis prædictis, nec idem Johannes de Godesfeld ad tunc fecit aliquam protesta-

## No. 11.

(JUSTICE). Ore ne meintenez vous pas vostre barre. A.D. 1341.

—HILL. Noun ; il ne covient pas, quant il fait tittle, mes a destruire son tittle.—Et puis HILLARY resorti al barre, et dit qe le primer plee ne fust pas barre, pur ceo qil ne gist pas en bouche la femme, par quei rienz y avoit a faire forsque prendre assise ; qar mesqe pleintif se face tittle ou le tenant ad plede devant a lassise, COURT prendra lassise ; qar cest a la COURT, sil vient par le record qen ascun temps de plee qil sont al assise, de prendre lassise, sanz aver regard a acceptance de parties.—*Thorpe*. Jeo die qe cest cours de ley quant tenant plede en assise plee par cas qest al assise, si la partie la priast et sur ceo demurast ; mes quant tenant face sa conclusioun en barre lassise, et le pleintif, acceptant ceo pur barre, se<sup>1</sup> fait autre tittle, et jammes resortira il a dire qe cest nest pas barre, ne Court nient le pluis.—*Quod CURIA omnino negavit*.—Et, outre ceo, *Thorpe* dit qe par fesance de tittle le pleintif avoit accepte qanquest compris deinz le barre.—*Blayk*. Certes ceo nest ley ; quant il se fait tittle de cost, nient referant au barre, rien del barre est par ley tenu a

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<sup>1</sup> T., ceo.



## No. 11.

A.D. 1341. not denied ; but, if he traverse one point of the bar, the rest is, perhaps, held as not denied.—And to this the COURT in a manner agreed.—*Thorpe*. He has pleaded that John Beaufour never had anything before William Beaufour enfeoffed him, and we think that he shall not be admitted to say that, since we have surmised that William was our younger brother, or [to deny] that this John de Godesfeld, who is now plaintiff as in right of Emma his wife, was seised as guardian after the death of James our ancestor who died seised, which seisin as guardian can only be supposed to be in right of the true heir, and he has not denied that we are heir; judgment whether to the averment, &c.—*Stouford*. By rigour of the law, when he admits an ouster and does not support it, the plaintiff shall have an assise for damages.—*HILLARY* to *Thorpe*. The plaintiff has not admitted that William Beaufour his feoffor was your younger brother ; there is no need for him to answer to that ; but since you do not maintain that you were seised before William enfeoffed him, it seems that there is no course but to take the assise.—Afterwards they were adjourned *in statu quo nunc est*.—And note that process was continued against the jurors of the Assise.—

tionem, &c., sed super titulo suo prædicto manutenendo dixit quod prædictus Willelmus fuit seiscitus de prædictis tenementis et inde feoffavit ipsum Johannem de Godesfeld, virtute cujus feoffamenti ipse Johannes de Godesfeld fuit inde seiscitus ut de libero tenemento, quousque omnes in brevi nominati ipsum inde disseisiverunt, absque hoc quod prædictus Johannes Beaufour aliquid habuit in eisdem tenementis ante seisinam ipsius Johannis de Godesfeld, &c., et sic in hoc casu acceptavit ipsum Johannem Beaufour placitare pro-

pinquitatem sanguinis, &c., unde petit judicium si prædictus Johannes de Godesfeld ad faciendum aliquam protestationem, quam tempore debito et jure permissio non fecit, vel ad expellendum ipsum Johannem Beaufour placitare propinquitatem sanguinis, quem prius ut prædictum est acceptavit, admitti, vel assisam inde per feoffamentum prædicti Willelmi versus eos habere debeat, &c. Et dies datus est eis hic in Octabis Sancti Michaelis in statu quo nunc, salvis partibus, &c. Et Vicecomes tunc habeat corpora recognitorum, &c.

## No. 11.

nient dedit; mes, sil travers un point du barre, le A.D. 1341, remenant par cas est tenu a nient dedit—*Et ad hoc CURIA quasi consensit.*—*Thorpe.* Il ad plede qe Johan Beauflour navoit unqes rien avant qe William Beauflour lui enfeffa, et nous entendoms qil ne serra pas resceu a ceo dire, del houre qe nous lavoms surmys qe W. fust nostre frere puisne, ne qe celui Johan qe se pleint come par resone Emme sa femme nostre mere fust seisi en garde apres la mort James nostre auncestre, et morust seisi, quele seisine en garde ne poet estre entendu fors qen le dreit le verrey heir, et il nad pas dedit qe nous sumes heir; jugement si al averement.—*Stouf.* Par reddour de ley, quant il conust un ouster et le meintient pas, le pleintif avera assise de damage.—*HILL. a Thorpe.* Il nad pas conu qe W. Beauflour son feffour fust vostre frere puisne; a ceo nad il mester a respondre; mes del houre qe vous ne meintenez pas qe vous fustes seisi devant qe W. lui feffa, il ny ad fors prendre lassise a ceo qe semble.—*Postea adjournantur in statu quo nunc est.*—*Et nota,* proces est continue vers Jurours de lassise.—*Et nota*

## No. 11.

A.D. 1341. And note that it seemed to the COURT that the bar to an assise should not be held as not denied when the plaintiff makes himself a collateral title, &c., as above, and particularly when the party of his own accord makes himself a title, as here, for the first plea was not held as a bar by the Court. And PARNING said that the plea did not lie in the mouth of the wife, nor consequently in the mouth of her husband, and that an assignee can not plead in bar a record of a recovery higher up, unless he have the record in hand, and that although one were party to the record, and then by demise another were joint-tenant with him, still he can not as privy allege a recovery. And PARNING said to *Stouford*, I wonder that you do not pray an assise for the damages, since they have admitted your possession by feoffment and that they ousted you, where, as strangers, they cannot plead the cause of the ouster; and I also wonder that you did not at the commencement pray the assise at large; but, although you make title, the Court, which is the third person, ought to award the assise.—Then they prayed judgment on the admission of the defendants, and the assise for the damages.—HILLARY. The assise shall never be taken at large, for he has admitted that the plaintiff was seised by such title as he has made to himself, and has avowed the ouster, so that it can not nor ought by law to be enquired of by the assise; then, if we should hold it not denied that James died seised and that John is the elder son and William the younger, we should proceed to judgment on the admission of the parties without the assise; for the question whether John was seised before William made the feoffment or not does not change the nature of the case.—*Thorpe*. Certainly not; for if the elder entered freshly, after his younger brother had made a feoffment to another of his inheritance, as we have alleged, it may stand well enough; and though it is said that the first

## No. 11.

qe sembloit a la COURT qe barre dassise ne serra pas A.D. 1341. tenu nient dedit quant pleintif se fait title de cost &c., *ut supra*, et nomement quant partie de gree se fait title, *ut hic*, qar le primer plee ne fust pas barre par Court. Et PARN. dit qen la bouche la femme le plee ne gist pas, *nec per consequens* en la bouche son baroun, et assigne ne poet pleder par record dune recoverir de plus haut en barre, sil neit le record en poygne, et mesqe un fust partie al record, et puis par demise autre soit joyntenant ove lui, uncore ne poet il aleger une recoverir come prive. Et PARN. dit a *Stouf.*, Jeo moi merveille qe vous ne priez pas assise pur damages, del houre qil ont conu vostre possession par feffement et qil vous ousterent, ou il sont estrange de pleder la cause del ouster; et auxi jeo merveille qe vous nussez a comencement prie lassise a large; mes, tout fait[es] vous title, la Court, qest la terce persone, deit agarder assise.—Puis il prierent jugement de lour conisance, et assise de damages.—HILL. Lassise ne serra jammes pris a large, qar il ad conu qe le pleintif fust seisi par autiel title come il sad fait, et ad avowe louser, issi qe ceo ne poet ne par ley ne deit estre enquis par assise: donques, si nous duissoms tenir nient dedit qe James<sup>1</sup> morust seisi et qe Johan est fitz eisme et W. puisne sur conisaunce de parties, nous prioms jugement saunz assise; qar le quel Johan fust seisi avant qe W. fist le feffement ou noun, ceo ne<sup>2</sup> change pas<sup>3</sup> la matere.—*Thorpe*. Noun certes; qar si leisme apres son puisne frere eit fait feffement a autre de son heritage frechement entre, come nous avoms alege, qil pout esterre assetz bien; et coment qe homme dit qe

<sup>1</sup> T., jammes.<sup>2</sup> T., qe.<sup>3</sup> T., par.

## No. 11.

A.D. 1241. plea was not a bar, I say that it is; for when John entered and afterwards changed his estate, the right was not thereby lost, and the husband and his wife may deny the deed of the husband; and we have passed a step further in that case, for, when the party accepted it, he was of full age.—PARNING. I have seen that a *Cessavit* was brought against a tenant for term of life, and he prayed aid, and it was granted by the party, and a summons issued, and afterwards BEREฟอร์ด abated the writ; so in this matter, although the plaintiff, for speeding his suit, has made himself a title where he need not have done so, you shall not be admitted to plead to that title, but the Court will take the assise.—HILLARY. Since he has made himself a title in order to have the assise, and the tenant has admitted it, and that the ouster was for a cause, it only remains to be seen whether the cause lies in his mouth or not, and whether they arrive at the assise for damages.—*Stouford*. We demand judgment, since he has admitted our title, and the ouster for a cause which does not lie in their mouth; and as to their saying that the plea which they have alleged for themselves shall be held as not denied, that cannot be, for we are a stranger, and no law puts us to answer what they have alleged; wherefore we pray assise for the damages.—*Thorpe*. And we demand judgment, since they do not deny as above, whether they ought to have assise for damages or in any other way.—And so to judgment.—And note that the Assise was ready.—And *Thorpe* said that although the Assise should be awarded, still they had come on a process which was discontinued, for it contained the words “John de Beauflour,” whereas the original writ had the words “John Beauflour.”—BASSET. That will be amended by Statute;<sup>1</sup> and since they are here, we will not abandon the matter for that.—They were adjourned.—Afterwards the wife died.

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<sup>1</sup> 14 Edw. III., St. 1, c. 6.

## No. 11.

le primer plee ne fust pas barre, jeo die qe si est; qar A.D. 1341.  
quant Johan entra et puis ad change<sup>1</sup> son estat, le  
dreit nest pas par tant perdu, et le baroun et sa femme  
pont dedir le fet le baroun; et si sumes uncore passe  
le pas en ceo cas, qar, quant partie lad accepte, de  
pleine age.—PARN. Jeo vie qe *Cessavit* fust porte vers  
tenant a terme de vie, et pria eide, et fust grante de  
partie, et somons issit, et puis BERR. abati le bref;  
auxi en ceste matere, tout eit le pleintif, sour hastier sa  
suyte, fait title ou il ne bosoignereit pas, vous ne serrez  
pas resceu a pledre a cele title, mes Court prendra  
assise.—HILL. Qaunt il se ad fait title pur aver assise  
et le tenant lad conu et loustre par cause, il ny ad a  
veer forsque si la cause gise en sa bouche ou noun, et  
sil attenent assise pur damages.—*Stouf*. Nous deman-  
dons jugement, del heure qil ad conu nostre title, et  
loustre par cause quele ne gist pas en lour bouche; et  
ceo qil parlount qe le plee qil ount alege pur eux serra  
tenu a nient dedit, ceo ne poet estre, qar nous sumes  
estrange, et nulle ley nous mette a respondre a ceo  
qil ount alege; par quei nous prioms assise de damages.  
—*Thorpe*. Et nous jugement, del heure qil ne dedient,  
*ut supra*, si assise pur damages ou en autre manere  
deivent aver.—*Et sic ad judicium*.—*Et nota* qe lassise  
fust prest.—Et *Thorpe* dit coment qe assise duist estre  
agarde, uncore ele est venu sur proces qest discontinue,  
qe voet Johan de Beaufour, ou loriginal est Johan  
Beaufour.—BASS. Ceo serra amende par statut; et  
quant il sont icy nous lerroms pas par taunt.—*Adjorn-*  
*antur*.—*Postea uxor obiit*.

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<sup>1</sup> T., challenge.

## No. 11.

A.D. 1341.  
Assise of  
Novel  
Disseisin.

§ John de Godesfeld brought an assise of Novel Disseisin against John de Beauflour and Margery, his wife, and one Almaria and others.—J. and M. answered as tenants, and said that there ought not to be assise because James Beauflour, father of John Beauflour, died seised of the tenements put in view, John Beauflour being then under age and in the wardship of Emma his mother by reason of nurture, and that this Emma took to husband John de Godesfeld the plaintiff, and that so John de Godesfeld was seised of the wardship, and that he aliened in fee to Andrew,<sup>1</sup> and took back an estate, and therefore this John Beauflour, when of full age, entered and enfeoffed one Almaria, and she enfeoffed this John Beauflour and Margery his wife; judgment whether assise, &c.—*Pole*. That plea does not lie in the mouth of the wife; wherefore we pray the assise.—This was not allowed.—*Pole*. It is very true that James Beauflour died seised, and after his death Emma who was his wife, and who is now the wife of John de Godesfeld, seized the tenements by reason of the non-age of William son and heir of James, who was then under age, and took to husband this John de Godesfeld, and that this William, when of full age, released to this John de Godesfeld, and so he was seised as of freehold, &c.; and we do not admit that John Beauflour was son of James or of his blood, and we say that he was of full age at the time of James's death, &c.—*R. Thorpe*. Part of your plea is in destruction of our bar, and part for the making of title; therefore make it certain to which you will hold.—Afterwards the plaintiff made title as by feoffment from William Beauflour.—*R. Thorpe*. We atode judgment on your first plea, and were adjourned, and therefore you shall not be admitted to another plea.—*Blaik* made title, as above, by feoffment from William Beauflour, without this that the defendant

<sup>1</sup> For the real name see the preceding report of the case.

## No. 11.

§ Johan<sup>1</sup> de Godefeld porta lassise de novele disseisine A.D. 1341.  
 vers J. de Beauflour et M. sa femme et un Almarie et <sup>Assisa</sup>  
 autres.—J. et M. respondirent com tenant, et disoient <sup>Novæ</sup>  
 qe assise ne doit estre qar James Beauflour, pere J., <sup>Disseisins.</sup>  
 morust seisi des tenementz mys en veuwe, J. adonques  
 deinz age et en la garde Emme sa miere par resoun de  
 norture, quel Emme prist a baron celuy J. qe se pleynt,  
 issi J. seisi de la garde, le quel J. aliena en fee a Andreu,  
 et reprist estat, par quei cesti J., a son age, entra et  
 enfeffa un Almarie, le quel enfeffa cesti J. et Margerie  
 sa femme; jugement si assise, &c.—*Pole.* Ce ple ne gist  
 pas en la bouche la femme; par quei nous prioms lassise.  
 —*Et non allocatur.*—*Pole.* Bien est verite qe James  
 Beauflour morust seisi, apres qi Emme, qe fut sa femme,  
 qe ore est femme Johan de Godefeld, seisi lez tenementz  
 par noun age W. fitz et heir James adonques esteant  
 deinz age, et prist a baron cesti J. de G., le quel Villiam,  
 a son pleyne age, relessa a cesti Johan, issi fuit il seisi com  
 de franctenement, &c.; et nous ne conissons pas qe  
 J. Beauflour fuit fitz James ne de soun sank, et dioms  
 qil fut de pleyne age al temps del mort James, &c.—  
*R. Thorpe.* Partie de vostre [plee] est a destruccion de  
 nostre<sup>2</sup> barre et partie pur tittle faire; par quei mettez  
 en certeyn a quel vous volez tener.—Pus le pleyntif fist  
 tittle par le feffement William Beauflour.—*R. Thorpe.*  
 Sour vostre<sup>3</sup> primer plee sumes demore en jugement, et  
 ajourne, par quei a autre plee navendrez pas.—*Blaik* fit  
 tittle, *ut supra*, par feffment W. B, sanz ceo qe le

<sup>1</sup> This report of the case is from  
 L. alone.

<sup>2</sup> L., vostre.

<sup>3</sup> L., nostre.



## No. 12.

A.D. 1341. ever had anything except by disseisin.—*Thorpe*. Your plea is double, viz., by making title, and by traversing our bar, &c.—*Blaik* made title by feoffment from William without this that the defendant ever had anything in this freehold before.—*R. Thorpe*. We pray that it be recorded that they have admitted that James died seised, and they have accepted our bar inasmuch as they make title by feoffment from a stranger, and we tell you that this William, through whom, as feoffor, they make title, is our younger brother, and entered as our tollor, and, while under age, enfeoffed you, and we, on the feoffment, freshly entered, as above; judgment where by reason of that feoffment you ought to have assise.—*Pole*. William was seised years and days, and that while you were of full age, and he enfeoffed us, and that feoffment you have admitted, and privity does not lie in the mouth of your wife to plead, nor consequently in yours; and we demand judgment, and pray the assise for damages.—*Thorpe*. Since you do not deny, as above.

Dower. (12.) § The wife of Monsieur John de Roos brought a writ of Dower. The tenant vouched William de Roos, brother and heir of J. the woman's husband, who entered into warranty as one who had nothing by descent, &c., and rendered to the demandant [her dower].—*Pole*, for the tenant, said that the vouchee had assets in other counties, and stated particularly where.—*Gayneford*. We pray dower against the tenant.—*Pole*. You cannot have that before this matter be tried; for, if the warrantor have assets by descent, you shall recover against him.—*BASSET*. The action of the demandant is admitted; wherefore

## No. 12.

defendant<sup>1</sup> unques rien navoit fors par disseisine.—*Thorpe*. A.D. 1341. Vostre plee [est] double, *videlicet* a faire title et traverser nostre barre, &c.—*Blaik* fit title par feffement W. sanz ceo qe le defendant<sup>1</sup> avoit unques rien en ceo fraunktenement a devant.—*R. Thorpe*. Nous prioms recorde qils ount conu qe James morust seisi, et ils ount accepte nostre barre en tant com ils fount title par feffement destrange, et vous dioms qe celui W., par qi feffor ils fount title, est nostre frere pusne, et entra com nostre tollour, et deynz age vous enfeffa, et nous frechement sour le feffement, *ut supra*, entrames; jugement si par cel feffement devez lassise aver.—*Pole*. W. fut seisi aunz et jours, et vous esteaunt de pleyn age, et nous enfeffa, quel feffement vous avez conu, et la privete ne gist pas en la bouche vostre femme a pledere, ne *per consequens* en la vostre; et demandoms jugement, et prioms lassise des damages.—*Thorpe*. Del hure qe vous ne dedites pas, *ut supra*.

(12.)<sup>2</sup> § La femme Monsieur Johan de Roos porta bref <sup>Dower.</sup> de Dower. Le tenant voucha W. de Roos, frere et heir J. baroun la femme, qentra come celui qe rien navoit par descente, &c., et rendist al demandante.—*Pole*, pur le tenant, dit qil avoit assetz en autres countes, et assigna en certain ou.—*Gayn*. Nous prioms dower vers le tenant.—*Pole*. Ceo ne poez aver avant qe ceste chose soit trie; qar, si le garrant eit assetz par descente, vous recoverez vers lui.—*BASS*. Laccion la demandante est conu; par quei agarde la COURT<sup>3</sup> qe la

<sup>1</sup> L., pleyntif.

<sup>2</sup> From T. alone, but corrected by the record *Placita de Banco*, Easter, 15 Edw. III., R<sup>o</sup>. 83 d. It there appears that the action was brought by Margaret, late wife of John de Roos, against Joan, wife of Richard de Willoughby, who was admitted on default of her

husband. The dower demanded was one third part of the manor of Sutton in Sutton-on-Trent (Notts.). She vouched William de Roos de Hamelak, brother and heir of John de Roos, son of "dominus" William de Roos of Hamelak.

<sup>3</sup> The record from this point to.

## No. 12.

A.D. 1341. the COURT adjudges that the demandant recover against the warrantor, if he have anything by descent, and, if he have not, then against the tenant, and he to to the value when the warrantor shall have anything.—And note that execution shall be stayed until enquiry be made of the matter.—*Quære* whether the warrantor should be amerced, for he came at the first day.—And note that he was not amerced; but if the tenant had taken delays he would have been amerced; and yet it would not have been his fault.—And note that afterwards, in the same term, HILLARY said that in such a case judgment ought not to have been given before it had been enquired whether the heir had anything by descent or not.—Afterwards it was said by other JUSTICES that the judgment ought to have been simply against the tenant.—See below, where the heir of the husband vouched in the same county, and the other denied the warranty, and seisin was awarded.

## No. 12.

demandante recovere vers le garrant, sil eit par de- A.D. 1341.  
scente, et, si noun, vers le tenant, et il a la value quant  
il avera.—*Et nota* qe execucion cessera tanqe la chose  
soit enquis—*Quere* si le garrant soit amercie, qar il  
vient al primer jour.—*Et nota* qil nest pas amercie;  
mes, si le tenant ust pris delays, il uste iste amercie;  
*et tamen* ceo ne serreit pas sa defalte.—*Et nota* qen  
mesme la terme apres HILL. dit qen autiel cas le  
jugement ne duist pas aver este rendu avant qil fust  
enquis si leir avoit par descende ou noun.—*Postea*  
*dictum est per alios Justiciarios* qe le jugement duist  
aver este simple vers le tenant.—*Vide infra*, ou leir le  
baroun voucha en mesme le counte, et autre dedit la  
garrant[ie], et seisine agarde.

the end is as follows:—"Ideo con-  
sideratum est quod, si prædictus  
Willelmus habeat de libero tene-  
mento quod fuit prædicti Jo-  
hannis, quod ei descendit in feodo  
simplici, unde facere possit ad  
valentiam, tunc prædicta Jo-  
hanna teneat in pace, et prædicta  
Margareta habeat de terra præ-  
dicti Willelmi, quæ ei sic descen-  
dit, ad valentiam, &c., et, si  
quid ei inde defuerit, id habeat  
de prædicta tertia parte versus  
prædictam Johannam petita, &c.  
—Et super hoc prædicta Johanna  
dicit quod prædictus Willelmus  
a die Sancti Hillarii in xv. dies  
proxime præterito, quando ipsa  
vocavit eum inde ad warrantum,  
habuit terras et tenementa apud  
Sanctum Botolphum, et Do-  
nyngton, in prædicto Comitatu  
Lincolniæ, quæ ei descenderunt  
per descensum hereditarium de  
prædicto Johanne in feodo sim-  
plici, unde &c., et hoc parata  
est verificare. — Et Willelmus  
dicit quod ipse nihil habet

"per descensum hereditarium  
apud Sanctum Botolphum, et  
Donyngton, in prædicto Comitatu  
Lincolniæ, nec alibi, in feodo sim-  
plici, &c., nec habuit prædictis  
die et anno, prout prædicta Jo-  
hanna dicit. Et de hoc ponit se  
super patriam. Et Johanna  
similiter." There follows the  
award of *Venire* to the Sheriff of  
the County of Lincoln. "Et, quia  
nescitur quantum prædictum  
manerium, unde &c., valet per  
annum, præceptum est prædicto  
Vicecomiti Nottinghamiæ quod  
per sacramentum proborum &c.  
extendi et appretiari faciat man-  
erium illud cum pertinentiis." The  
Lincolnshire jury found that  
William had nothing by descent  
of inheritance in Lincolnshire in  
fee simple. "Ideo prædicta Mar-  
gareta habeat executionem de  
dote sua prædicta versus præ-  
dictam Johannam, &c. Et Will-  
elmus de Roos warrantus, &c. in  
"misericordia."

## No. 13.

A.D. 1341. (13.) § *Quare impedit* was sued against the Abbot of Reading, who came and defended as to the words of the Court and the damages. And thereupon the bailiff of the same Abbot came and prayed cognisance of the plea, and shewed by point of charter that he had cognisance of all pleas.—*Thorpe*. He himself has defended as to the damages, and so has affirmed the jurisdiction of the Court. Besides, this is a *Quare impedit*, on which you (the defendant) can not grant a writ to the Bishop; so you (the Court) are informed that he can not do right to the parties; wherefore, because he does not answer, we pray judgment.—And then *Gayneford* produced a writ to allow the franchise, which writ was badly conceived.—And therefore *Gayneford* defended, and went out to imparl, and then said that he did not admit the presentation by the plaintiff's ancestor, nor that the presentee was received on his presentation; and (said *Gayneford*) we tell you that what he calls a church is a chapel to our church of Eye; judgment of the writ.—*Thorpe*. He does not deny the presentation by our ancestor as to a church, nor that the presentee was admitted and instituted by the Bishop; and that fact properly makes it a church, even though it had been a chapel

## No. 13.

(13.)<sup>1</sup> § *Quare impedit* fust suy vers Labbe de Redyngs, qe vient et defendi les paroles de la Court et les damages. Et sur ceo le baillif mesme Labbe vient et pria la conisance du plee, et moustra par point de chartre qil ad conisance de touz plees.—*Thorpe*. Il [ad] defendu mesme les damages, issi afferme jurisdiction de Court. Ovesqe ceo, cest un *Quare impedit* ou vous ne poez graunter bref al Evesqe; issi estes vous apris qil ne poet tenir dreit as parties; par quei, de ceo qil ne respond pas, nous prioms jugement.—Et puis *Gayn*. mist avant bref dalower la fraunchise, quel bref fust malement consu, par quei *Gayn*. defendi, et issit denparler, et puis dit qil ne conust pas le presentement launcestre le pleintif, ne qil fust resceu a son presentement; et vous dioms qe ceo qil apele eglise est chapele de nostre eglise de Eye; jugement du bref.—*Thorpe*. Il ne dedit pas le presentement nostre auncestre come a eglise, ne qil fust resceu et institut Devesqe, quele chose proprement le fait eglise, tout ust ele este chapele

A.D. 1341.  
Quare  
impedit.

<sup>1</sup> From T. alone, but corrected by the record, *Placita de Banco*, Easter, 15 Ed. III. R<sup>o</sup>. 117 d. It there appears that the action was brought by John de Boulwas (Buildwas?), knight, against the Abbot of Reading, in respect of the church of Brimfield (Herefordshire). There is not on the roll anything relating to cognisance of pleas. The Abbot traversed the admission and institution of the presentee of the plaintiff's ancestor (as in the report), and issue was joined on that question of fact. Pending the plea, however, the plaintiff, by his *scriptum*, "remisit, relaxavit, et omnino de se et heredibus suis in perpetuum quiete clamavit prædicto Abbati

"et successoribus suis totum jus et clameum quod habuit in advocacione ecclesiæ prædictæ." The *scriptum* follows on the roll. It recites "quod cum placitum motum esset in Curia domini Regis . . . . tandem ex parte dicti Abbatis ostensa fuerint quædam chartæ, confirmationes, et instrumenta papalia, ac alia munimenta per quas et quas manifeste apparuit quod prædicta est capella annexa ecclesiæ de Eye, quam prædictus Abbas in proprios usus tenet" . . . . as the right of his church of Reading. Therefore the plaintiff confessed he had no right in the advowson, and released, &c., as above.

## No. 13.

A.D. 1841. previously, which we do not admit; wherefore judgment; and we pray a writ to the Bishop; for according to the form in which my ancestor presented I ought to demand.—*Derworthy*. Then, according to what you say, it would follow that a *Quare impedit* would never be abated by an exception of that nature.—*HILLARY*. That may be; answer. — *Stouford*. It is a chapel annexed to our church, which we have held to our own use from time whereof memory, &c., without this that the person whom he alleges to have been presented was admitted on the presentation of his ancestor; ready, &c.—*Thorpe*. The issue is double—on the one hand by traversing our title, and on the other by claiming appropriation.—*Stouford* was compelled to hold to one, and he said that the presentee of the plaintiff's ancestor was not admitted &c.; ready, &c.—And the other side said the contrary.—And nevertheless *Stouford* said that he ought by law to have his first answer, notwithstanding the duplicity.

*Quare  
impedit.*

§ John de Blok, knight, brought a *Quare impedit* against the Abbot of Reading, which Abbot prayed cognisance of the plea, and showed allowance in other pleas in which he was himself a party.—*Thorpe*. A plea of *Quare impedit* is one in which there may be process by attachment and distress, and you cannot by right levy issues or amercements against yourself. Further, you cannot make execution of judgment in our favour as by sending a writ to the Bishop. Further, even though cognisance be demanded, the party shall defend, and that he has not done; judgment.—*Pole* did not dare to abide judgment, and said that what the plaintiff described as a church was a chapel of the church of E.; judgment of the writ.—*Thorpe*. We presented as to a church, and to that you do not answer; judgment.—*Pole*. It is a chapel of the church of E., and has always been a chapel of E., which church we hold to our own

## No. 13.

a devant, quele chose nous ne conisoms pas ; par quei A.D. 1341.  
jugement ; et prioms bref al Evesqe ; qar solonc ceo qe  
mon auncestre presenta si dei jeo demander.—*Derworth*.  
Donques a vostre dit ensuerait qe jammes par tiel  
excepcion ne serreit *Quare impedit* abatu.—*HILL*. Poet  
estre ; responez.—*Stouf*. Cest chapelle annex a nostre  
eglise, quele nous tenoms en propre oeps du temps dont  
memorie, &c., sanz ceo qe celui qe dit estre presente  
fust resceu al presentement son auncestre ; prest, &c.—  
*Thorpe*. Lissu est double ; un de traverser nostre tittle,  
un autre de clamer appropriacion.—*Stouf*. fust chace  
de prendre a lun, et dit qe le presente son auncestre  
ne fust resceu, &c. ; prest, &c.—*Et alii e contra*.—*Et*  
*tamen Stouf*. dit qe par ley il duist aver son primer  
respouns, *non obstante* la doublesse.

§ Johan<sup>1</sup> de Blok,<sup>2</sup> chivaler, porta un *Quare impedit* Quare  
impedit.  
[Fitz.  
Conisans,  
41.]  
vers Labbe de Redyng, le quel abbe pria conisance, et  
moustra allowans en autres plees la ou il fuit mesme  
partie.—*Thorpe*.<sup>3</sup> Ceo plee est menable par attachement  
et destresse, et vous ne poiez par dreit issues ne amercia-  
mentz vers vous mesme. Estre ceo, vous ne poiez faire  
a nous execucion de jugement cum de mander bref al  
Evesqe. Estre ceo, mes qe homme demande conisance,  
la partie defendra, et ceo nad il pas fait ; jugement.—  
*Pole* nosa pas demorer, et dit qe ceo qe noma eglise  
fuit chapele del Eglise de E. ; jugement de bref—*Thorpe*.  
Nous presentames com a eglise, a qi vous ne responez  
pas ; jugement.—*Pole*. Ceste chapel del eglise de E., et  
ad este chapel de E. tote temps, quel eglise nous tenoms

<sup>1</sup> This report of the case is from  
L. alone.

note to the report of the same case  
immediately preceding (p. 41).

<sup>3</sup> L., *Pole*, but *Pole* appears to

<sup>2</sup> As to the real name see the

have been on the other side.



Nos. 14, 15.

A.D. 1341. use, for the presentee of our ancestor was admitted,<sup>1</sup> &c., (and he alleged the admission of a particular person).—And the first part of his answer was ousted by consent of the parties, &c.

Dower. (14.) § Dower.—The lady made her demand for the third part of the moiety of a manor, &c.—*Thorpe*. We tell you that that whereof she makes her demand is only a messuage and a carucate of land; and as that we vouch to warranty.—*Derworthy*. We tell you that there are several messuages, and carucates, and meadow, and wood, &c. Of the residue, in respect of which you do not answer, we pray seisin, and, as to the parcel in respect of which you vouch, let the voucher stand.—*Thorpe*. You shall not have an issue as to whether the demand be more or less.—*Derworthy*. It must be so; for, if I were to accept the voucher as made, it would be held as not denied by me that there is only one messuage and one carucate, &c. If the heir of the husband, who is vouched, were to enter into warranty in this manner, I should recover against him only as to the portion, and the tenant would hold in peace that which he has in excess.—*HEPPESCOTES*. The vouchee shall be summoned to warrant according to your demand; and therefore what he says shall be entered, and what you say also, but averment shall not be entered.—And so it was done.—See like matter in Botiller's case.

Execution  
on a  
Statute.

(15.) § Five knights made a recognisance by Statute Merchant to Ralph de Wedone, so that execution in common was awarded to him, and a *Capias* to take their bodies. And he continued that suit on the roll by *postea*s. And, pending that suit, the knights made satisfaction to him, and he delivered to them the Statute, and it was cancelled. And, notwithstanding that, he proceeded by suing out a writ to the Sheriff to take them, by virtue of which writ two of them were

<sup>1</sup> The translation is in accordance with the text, which is, however, obviously corrupt.

## Nos. 14, 15.

en propre oeps, qar le presente nostre auncestre fut A.D. 1341. resceu, &c., et allegea quel fuit resceu.—Et le primer de soun respons ouste par assent des parties, &c.

(14.)<sup>1</sup> § Dower.—La dame fist sa demande de la *Dowere*. terce partie de la moite dun manoir, &c.—*Thorpe*. Nous vous dioms qe ceo dont ele fait sa demande nest forsque un messuage, une carue de terre; et quant a ceo nous vouchoms a garrant.—*Derworth*. Nous vous dioms qil y sont plusours messuages, et carues, et pree, et bois, &c. Del remenant, de quei vous ne responez, nous prioms seisine, et, de la parcele dont vous vouchez, estois.—*Thorpe*. Le quel la demande soit de pluis ou meyns vous naverez pas issu.—*Derworth*. Si covient; qar, si jeo acceptasse le vouchier par la manere, il serra tenu a nient dedit de moi qil ny ad forsque un messuage et carue, &c. Si leir le baroun, qest vouche, entrast par la manere en garantie, jeo recoverai vers lui forsque solonc la porcion, et le tenant tendra en pees la ou il ad pluis.—*HER*. Le vouche serra somons de garrantir solonc ceo qe vous demandez; et pur ceo [ceo] qil dit serra entre, et vostre dit auxi, mes averement ne se fra pas entrer.—*Et factum est ita*.—*Vide tali materia* Botiller.

(15.)<sup>1</sup> § V chivalers firent une reconisance sur *Execucion* statut marchant a Rauf de Wedone, issi qe execucion *sur statut*. en comune li fust agarde, et *Capias* de prendre lour corps. Et il continua cele suyte en roulle par *postea*s, pendant quele suyte les chivalers firent son gree, et il les livra lestatut [qe] fust dampne. Et, *non obstante* cela, il suyst avant bref a Vicounte de les prendre, par

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<sup>1</sup> From T. alone.

## No. 15.

.A.D. 1341. taken. One was in Newgate, the other in the Bench. And upon this *Blaik* rehearsed to the Justices, and showed a writ comprising his case, *quod vocatis partibus*, &c., and prayed a writ to cause Ralph de Wedone to come and answer as to that falsity, and also a writ to let out on mainprise the others who had been taken, to be here on the same day that Ralph should have.—HILLARY. Your writ is not to this effect, but we will grant a writ to cause Ralph to come; and do you sue a writ in the Chancery to let the others out on mainprise, for we can not do it.—And afterwards a writ was granted to the Sheriffs of London to cause him to come who was in Newgate, that is to say Roger Stifrewas knight, who was one of the five knights, &c.—And afterwards the four did not sue, and Roger proffered himself and prayed that Ralph might be called.—*Gayneford*. The suit is taken for all in common, and the four do not sue; judgment of their nonsuit.—HILLARY. If this were an original your exception would hold good; but it is not reasonable that Roger should be imprisoned, or suffer damage, through the nonsuit of the others, who perhaps are at large.—*Stouford*. His matter might be such that he should have several suit; but then he would have a several writ; but this suit, which was begun by all in common, can not by law be continued by one alone.—HILLARY. We lay great stress on that point; but the writ which comes to us is not in accordance with the Statute, and thus we have no warrant.—*Gayneford*. Then you can do nothing; wherefore we pray execution as to the residue of the Statute which was not previously executed.—Afterwards in Hilary term next ensuing judgment was demanded of the nonsuit, as above.—*Thorpe*. This writ and suit ought to rehearse the Statute made by all; but the grievance is several as to the imprisonment and also as to having their lands again, unless the case were that the lands were

## No. 15.

quel bref les deux pris. Lun en Newegate, lautre en A.D. 1341. Bank.—Et sur ceo *Blaik* rehercea as Justices, et moustra bref conpernant son cas, *quod vocatis partibus*, &c., et pria bref de faire venir Rauf de Wedone de respondre a cel fauxine, et auxi bref de lesser les autres, que sont pris, a maynprise destre cy a mesme le jour qe Rauf avera.—HILL. Ceo ne voet pas vostre bref, mes nous granteroms bref de faire Rauf venir; et sues vous bref en Chauncellerie de lesser les autres a maynprise, qar nous nel pooms pas faire.—Et puis fust bref graunte a Vicountes de Loundres de fair cestui venir qest en Neuwegate, saver Roger Stifrewas chivaler, quest un de v. chivalers, &c.—Et puis les iiij. ne suerent point, et Roger se profry et pria qe Rauf fust demande.—*Gayn*. La suyte est pris en comune pur touz, et les uns ne suyont pas; jugement de lour noun suyte.—HILL. Si ceo fust original vostre chalange liereit; mes il nest pas resone qe Roger soit enprisone par nounsuyte des autres, qe par cas sont a large, [ou] qil soit en damage.—*Stouf*. Sa matere purreit estre tiele qil averoit soul suyte; mes donques averoit il soul bref; mes ceste suyte comence par touz en comune ne poet par ley estre continue par un soul.—HILL. Nous chargeoms gros cel point; mes le bref qe nous vient nest pas accordant as statut, et isei navoms pas garrant.—*Gayne*. Donques poez rien faire; par quei nous prioms execucion del remenant de lestatut qe ne fust pas execut devant.—*Postea termino Hillarii proxime sequente* fust demande jugement de la nounsuyte, *ut supra*.—*Thorpe*. Cestui bref et suyte covient rehercer lestatut fait par touz; mes le grevance est severale quant al enprisonnement et auxint quant a reaver lour terres, sil ne fust issi

## No. 15.

A.D. 1341. holden in common ; wherefore, even though the others will not sue, Roger, who is out of his land and imprisoned, shall not be ousted from his suit.—*Gayneford*. It is not as you say, that he who is aggrieved shall have the suit, for then the suit ought to be taken for him alone.—*Thorpe*. Suppose that all came and wished to sue this writ, each one severally ought to show his grievance, and for the same reason the nonsuit of the others shall not oust Roger from his suit.—*Pole, ad idem*. As the writ of *Audita querela* came to you out of the Chancery, that writ gave you warrant to hear the plaint of all and of each by himself ; and if the case were that none complained you would do nothing ; then you find by the record on the roll that Roger alone made his plaint, out of which plaint this writ issued ; so the suit is taken for Roger alone.—*Gayneford*. This writ must be warranted by some original ; now there is no other original in this case but the writ of *Audita querela* ; and also this writ does not purport anything more than *præmissis responsurus*, and does not mention to whom the answer is to be, so we are without a party.—*Pole*. Such is the form in this Court, and it can only be understood to mean to answer to those who complain, and that is to Roger alone.—*Gayneford*. Although, according to the roll, Roger alone complains, we have not a day by the roll, but by the writ, which can only be understood to mean to answer to all, since the grievance is charged on behalf of all ; judgment of the writ.—*Thorpe*. Then it is no more than as if all complained. And suppose that it were so, and that they came, still if they came they would have a plaint in common as to their common land, and also sole and several plaints as to their several freeholds, if livery had been made thereof, although the suit were taken in common. And suppose that all were in Court, and some were to withdraw from the suit, still the others would have suit.—HILLARY. We

## No 15.

qe les terres fussent tenuz en comune; par quei, mesqe A.D. 1341. les autres ne voleint pas suyr, Roger, qest hors de sa terre et enprisone, ne serra pas ouste de sa suyte. —*Gayn.* It nest pas issi come vous parles, qe celui qest greve avera la suyte, mes donques la suyte dust estre pris pur lui soul.—*Thorpe.* Jeo pose qe touz venissent et vodreint suir ceo bref, chescun severalment duist moustrer sa grevance, et par mesme la resone la nounsuite des autres noustra pas Roger de sa suyte.—*Pole, ad idem.* Qe le bref de *Audita querela* vous vient hors de la Chauncellerie, ceo bref vous dona garrant doier la plainte de touz et de chescun a par lui; el sil fust issi qe nul se pleinsist vous ferrez rien; donques vous trovez pur record en rulle qe Roger soul fist sa plainte, hors de quele plainte cestui bref est issu; issi la suyte pris pur Roger soulement.—*Gayn.* Cestui bref covient estre garranti dascun original; ore autre original nad en ceo cas fors le bref *Audita querela*; et auxi ceo bref ne voet autre chose forsque *præmissis responsurus*, et ne dit pas a qi respondre, issi sumes sanz partie.—*Pole.* Tiel est la forme de ceinz, et il ne poet estre entendu mes a respondre a eux qe se pleinent, et ceo est Roger soul.—*Gayn.* Coment qe par rulle Roger soul se pleint, nous navoms pas jour par rulle, mes par bref, quel ne poet estre entendu mes a respondre a touz, del houre qe pur touz la grevance est charge; jugement du bref.—*Thorpe.* Donques ny ad plus mes come si touz se pleynissent. Et jeo pose qe issi fust, et il venissent, uncore, sil venissent, de lour terre comune il avereint plainte en comune, et auxi de lour several frank tenement, sil fust livre, singuler et severale plainte, tout fust la suyte pris en comune. Et jeo pose qe touz fuissent en Court, et les uns se retreissent de la suyte, uncore les autres averont suyte.—*HILL.* Nous agardoms

## No. 15.

A.D. 1341. do not adjudge nonsuit in this case, and the writ is good enough; wherefore answer.—And afterwards exception was taken to the writ for that it was not supposed that the Statute Merchant was delivered to Roger by Ralph.—This was not allowed; for, if it was cancelled, the delivery was of no consequence.—And afterwards exception was taken to the writ because in the original writ the words are only *Audita querela*, and the writ which issued upon that, and by which the party had a day in Court, does not state any certain fact to which he ought to answer.—This was not allowed.—*Gayneford*. Roger Styfrewas and the others took us by force at A., and imprisoned us, and, took the Statute Merchant from us, and tore off the seal; judgment whether in the suit for execution you can fix any tort in our person.—*Thorpe*. The trespass which we committed shall not be tried on this writ.—*Gayneford* said as before, adding without this that we cancelled [the Statute] or took off the seal; ready, &c.—*Thorpe*. Ready, &c. our plaint.—*Gayneford* prayed that his plea might be entered.—And note that Roger could not be let out on mainprise.—Afterwards in Easter Term, *Thorpe* prayed a *Nisi prius* for Roger.—HILLARY. You shall not have it; for the party complaining is in custody, and it is fit that he should be.—*Thorpe*. We pray that you receive his attorney.—HILLARY. No, for the reason above.—*Thorpe*. We pray that he be let out on mainprise.—HILLARY. He shall not be; for he is taken by virtue of the Statute Merchant, and it is expressed in the Statute that the body shall remain until satisfaction be made for the debt.—*Thorpe*. By our suit we are endeavouring to show that satisfaction has been made; and, Sir, the mainperners will be responsible for the debt; and it is very hard that the knight should remain thus for ever in custody on account of the falsity of the other, for he will never, as long as he is in custody, succeed in causing jurors to come from so distant a county.—

## No. 15.

pas nounsuyte en ceo cas, et le bref est assetz bon ; A.D. 1341. par quei responez.—Et puis fust le bref chalenge de ceo qe ne fust pas suppose qe lestatut fust livre a Roger par Rauf.—*Non allocatur* ; qar, sil fust dampne, il ny ad force de la livre.—Et puis fust le bref chalenge pur ceo qe loriginal bref ne voet forse *Audita querela*, et le bref qe yst hors de cel, par quel partie ad jour en Court, ne voet pas certain fait a qi il deit respondre.—*Non allocatur*.—*Gayn*. Roger Styfrewas et les autres nous pristrent a force a A., et nous enprisonnerent, et nous tollerent lestatut, et aracerent le seal ; jugement si en la suyte del execucion tort en nostre persone puissez attacher.—*Thorpe*. Le trespas qe nous feymes ne serra trie en ceo bref.—*Gayn*. *Ut prius*, sanz ceo qe nous chancellames ou ostames le seal ; prest, &c.—*Thorpe*. Prest, &c. nostre plainte.—*Gayn*. pria que son plee fust entre.—*Et nota* qe Roger ne poet estre lesse a maynprise.—*Postea*, *termino Paschæ*, *Thorpe*, pria pur Roger *Nisi prius*. [Fitz. *Nisi Prius*, 22.] —*HILL*. Vous naverez pas, qar la partie plainte est en garde, et covient qil soit.—*Thorpe*. Nous prioms qe vous resceivez son attourne.—*HILL*. Nanyl, *causa quia supra*.—*Thorpe*. Quil puisse estre par maynprise.—*HILL*. Noun serra, qar il est pris par Statut marchant, et lestatut voet qe le corps demorge tanqe gree soit fait de la dette.—*Thorpe*. Par nostre suyte sumes dattendre qe gree est fait ; et, Sire, les meynpernours se<sup>1</sup> prendront pur la dette ; et il est graunt meschief qe le chivaler demura issi touz jours pur la fauxine lautre en garde, qar jammes ne fra il, tanqil est en garde, les gentz de si forein counte venir.—

<sup>1</sup> T. ne.



## No. 16.

A.D. 1341. HILLARY. We can not.—But a day was given.—But note that in Michaelmas, Easter, and Trinity terms in the 14th year others in a similar case were let out on mainprise.

Elegit.

(16.) § A woman sued execution upon a recognisance by *Elegit*, and she had the lands, &c. ; and afterwards the debtor, on his suggestion that he had made satisfaction for the debt, had a *Scire facias* against the lady, to show cause if she had anything to say why the lands should not be delivered to him. The Sheriff returned to the writ that she has not nor had any lands except the lands delivered to her in the manner mentioned, and he said that she had leased those lands to another and his assigns until he should have levied certain moneys, and that she thus had nothing wherein she could be warned.—*Pole*. We pray an *alias* writ to warn her in the lands which she had by the execution.—*Thorpe*. You shall not have it ; for that would be to suppose by the process that her assignee should be ousted, which would be unreasonable unless it were by suit made against him.—*Pole*. It is not proved by the return that he is assignee of the estate of the lady ; and even, if he were assignee, a writ of Account does not lie against him, for it does not lie except against a party, his heir, or executor.—HILLARY. What you say is wrong ; for if it had been a bastard who had execution, and he had made an assignee, and died intestate, without heir of his body, against whom should one sue ? And I say that this writ was not well granted before the expiration of the term, if you did not show an acquittance or some special cause.

Scire  
facias.

§ Thomas B. sued a writ to warn Isabel Inge to show cause why he should not have again certain tenements which were delivered to Isabel by virtue of *Elegit*, and to account for the profits.—The Sheriff returned that Isabel had nothing, but that one J. de Ifeld was tenant by her lease.—*Pole*. We pray that Isabel be warned in the tenements delivered to her by virtue of

## No. 16.

HILL.—Nous ne pooms.—Mes ad jour.—*Sed nota* A.D. 1341.  
*quod Michaelis, Paschæ, et Trinitatis xiiij.* autres en  
 tiel cas furent a maynprise.

(16.)<sup>1</sup> § Une femme suyst exeeucion par *Elegit* *Elegit*.  
 hors dun reconisance, et avoit les terres, &c.; et apres  
 le dettour, sur sa suggestioun qil avoit fait gree de  
 la dette, avoit *Scire facias* vers la dame si ele savoit  
 rien dire pur quei les terres ne lui duissent estre  
 livez. Le Vicounte retourna le bref qele nad ne  
 navoit nules terres forsque les terres livez a lui par  
 la manere, et dit qe celes terres il avoit lesee a un  
 autre et ses assignes tanqil ust leve certains deners, et  
 issi ad ele rien oue estre garny.—*Pole*. Nous prioms  
*Sicut alias* de la garnir en les terres qele avoit par  
 exeeucion.—*Thorpe*. Ceo naverez pas; qar ceo serreit  
 a supposer par le proces qe son assigne serreit ouste,  
 qe nest pas resone sil ne fust par suyte fait vers lui.  
 —*Pole*. Il nest pas prove par le retourn qil est assigne  
 del estat la dame; et, tout fust il assigne, bref dacompt  
 ne gist pas vers lui, qar il ne gist pas forsque vers  
 partie, heir, ou executour.—HILL. Vous dites male;  
 qar sil fust bastard, qavoit exeeucion, et avoit fait  
 assigne, et morust intestat, sanz heir de son corps,  
 vers qi suereit homme? Et jeo die qe ceo bref ne  
 fust pas bien graunte devant le terme encoru, si vous  
 nuszeste mostre acquitance et ascune cause especiale.

§ Thomas<sup>2</sup> R. suyt bref de garnir I. Inge pur quei il ne Scire  
 reavera certains tenementz quex luy<sup>3</sup> furent livez par le *Elegit*, *facias*  
 et de acompter des profitz.—Le Vicounte retourna qil neunt  
 rien, mes un J. de Ifeld fuit tenant par le lees Isabel.—*Pole*.  
 Nous prioms qe soit garni en les tenementz a luy livez par

<sup>1</sup> From T. alone, as far as the point at which the larger type ends.

features in common with that last above printed, is from L. alone.

<sup>2</sup> L., la.

<sup>3</sup> This report, which has some

## No. 17-19.

A.D. 1841. the *Elegit*, because we ought not to sue against another who is not party to the record.—*Thorpe*. You admitted yourself that he was made assignee, and he ought not to lose his estate without an answer.

Account. (17.) § Note. Account was sued against two persons. At the return of the *Capias* one came in custody of the Sheriff, the other did not come.—HILLARY. He can not account by parcels, and therefore he who has come shall remain [in custody] until the other comes.

Note. (18.) § Note that a Day of Grace shall not be granted except on the prayer of the plaintiff, for the defendant can not have it.

Avowry. (19.) § Avowry, for that one is seised, as in right of his wife, of an honour, to which the hundred of L. is appendant. And he showed how he ought to have certain Law-days, which have the force of view of frankpledge, and how the plaintiff is resiant within the hundred, and because he would not present things presentable, he was amerced and affeered, and for the amercement the defendant avows as in a place within

## Nos. 17-19.

ley *Elegit*, qar nous ne devons pas suyer vers autre qe nest A.D. 1341. partie al record.—*Thorpe*. Vous mesmes conustes qele fut fait assigne, et il ne doit pas perdre son estat sanz respons.

(17.)<sup>1</sup> § *Nota*. Accompt suy vers ij. Al *Capias* Accounte. lun vient en garde de Vicounte, lautre ne vient pas.—*HILL*. Il ne poet acompter par parcelles, par quei celui qest venu demura tanqe lautre vendra.

(18.)<sup>1</sup> § *Nota* qe jour de grace ne serra pas grante *Nota*. sil ne soit al priere le pleintif, qar le defendant ne le poet aver. [Fitz.  
Jour,  
26.]

(19.)<sup>2</sup> § *Avowere*, pur ceo quil est seisi dun honour, *Avowri*. a quei le hundred de L. est apendant, come de dreit sa femme. Et moustra coment il duist certains laudays, qe sont de la force de vewe de fraunk plege, et coment le pleintif est reseant deinz le hundred, et [pur ceo qil] ne voleit presenter choses presentables, il fust amercie et affure, et pur lamerceement il avowe come

<sup>1</sup> From T. alone.

<sup>2</sup> From T. alone, but corrected by the record, *Placitu de Banco*, Easter 15 Ed. III. R<sup>o</sup>. 71 d., in which it appears that an action of Replevin was brought by William Urry against John le White of Auvyngdene (Ovingdean?). There are similar cases involving precisely the same points on R<sup>o</sup>. 74, R<sup>o</sup>. 74 d., R<sup>o</sup>. 75, R<sup>o</sup>. 75 d., R<sup>o</sup>. 76, R<sup>o</sup>. 76 d., and R<sup>o</sup>. 78. In each case the action is brought (by a different plaintiff) against a bailiff of John de Moubray and Joan his wife. That which is described as an *avowry* in the report is, according to strict technical language, a *cognisance* made by the bailiff. He makes this cognisance because "iidem Johannes de Moubray et Johanna sunt domini baronis de Brembre,

"infra quam baroniam ipsi habent  
"plura hundreda, inter quæ habent  
"quoddam hundredum quod vocatur hundredum de Brutford, unde  
"prædictus locus in quo &c. est  
"parcella, infra quod hundredum  
"prædictus Willelmus qui nunc  
"queritur, &c. est residens. Et  
"dicit quod ipsi habent in eodem  
"hundredo duos laghedeyes, bis  
"per annum, apud Brutford tenendos, . . . qui quidem laghedeyes purportant vigorem  
"visus franci plegii, ad quos duos dies omnes residentes infra  
"hundredum prædictum, per rationabilem præmunitionem, vel  
"per publicam proclamationem  
"in eodem hundredo faciendam, venire debent ad præsentandum  
"ea quæ ad visum franci plegii  
"sunt præsentabilia, &c., de quo

## No. 20.

A D. 1341. the precinct of the hundred.—*Derworthy*. We were not resiant, at the time of the view, within that hundred, but in another hundred ; ready, &c.—And the other side said the contrary.—And he has aid of the wife because the matter is of her right. And note that sometimes the husband is told to produce his wife, and sometimes she is summoned, in such a case ; but here she was sunmoned.

Fresh  
Force.

(20.) § Fresh Force, which passed at Oxford, between the Master of the Scholars of Merton and the Austin Friars of Oxford, was, by reason of Error, caused to come into the King's Bench. And there it was alleged that the record was different from that which had been sent. Therefore the Mayor and Bailiffs were caused to come to record their record. And they came and avowed the record. And the party offered to aver that the record was different. And it was said that this was not within the Statute<sup>1</sup>—to have the averment—except

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<sup>1</sup> 1 Ed. 3. St. 1. c. 4.

## No. 20.

en lieu deinz la purceinte del hundred.—*Derworth. A.D. 1341.*

Nous fumes pas resceant, al temps de la vewe, deinz cel hundred, einz en autre hundred; prest, &c.—*Et alii e contra.—Et habet auxilium de uxore quia de jure suo. Et nota quod aliquando dictum est viro suo quod habeat uxorem suam, aliquando summonita est in tali casu; sed hic fuit summonita.*

(20.)<sup>1</sup> § Frecheforce, qe passa a Oxeneforde, entre le Mestre des escolers de Mertone et les Freres Augustyns de Oxeneforde, fust fait venir, par cause derroure, en Bank le Roi, et la qe le record fust autre qil navoint mande; par quei le Mair et les baillifs furent fait venir de recorder lour record, qe viendrent et avowerent le record. Et la partie tenderent daverer qe le record fust autre. Et fust dit qe ceo nest pas en cas destatut daver averement si noun en cas de

Freche  
Force.

"quidem adventu ipsi Johannes de Moubray et Johanna, et omnes illi quorum statum ipsi habent, in baronia predicta, fuerunt seisiiti de illis qui residentes fuerunt in eodem hundredo, a tempore quo non extat memoria." The plaintiff was amerced at one of these "laghedeyes" for non-appearance after summons, and the amercement was affeered at 13 d., for which the defendant levied the distress. The plaintiff in his plea denied resiance at the time at which he was presented for non-attendance, "et hoc paratus est verificare."—"Quam quidem verificationem ipse Willelmus sine predictis Johanne de Moubray et Johanna expectare non potest. Ideo praeceptum est Vicecomiti quod summoneat predictos Johannem de Moubray et Johannam quod sint

"hic . . . . ad respondendum simul si, &c." It thus appears that it was the bailiff who had aid—a point left obscure in the report. John and Joan appear and join issue as to resiance. Then follows the award of *Venire*. The plaintiff does not appear on the day. Judgment is then given for the defendants to have the Return. "Postea venit predictus Willelmus in Curia hic et petit deliberationem predicti bovis et ei conceditur. Ideo habeat inde breve retornabile hic in Octabis Sanctae Trinitatis."

<sup>1</sup> From T. alone. The report is not very clear, and the text appears to be in some places corrupt. The King's Bench record, however, of the proceedings in Error (in which are recited the original proceedings in the assise of Fresh Force) has been found

## No. 20.

A.D. 1341. in a case of false judgment. And also it was said that the Mayor and bailiffs ought not to be caused to come by process of law in such a case, but they should be commanded by writ to cause the record to come more fully, as other Justices are commanded to do.—*Quære*.—And note that where suitors to a Court give judgment, there a writ of False Judgment lies; and where others by reason of a franchise or commission give judgment, there Error lies.—And note the process by which the record came:—the Prior sued out of Chancery a writ of *Pone per vadium*, directed to the Sheriff, and returnable in the King's Bench, to attach the Mayor and Bailiffs to cause the record to come into the King's Bench; and then a *Distringas* issued.—And they came with the record and with what they had touching the record.—And variance was assigned between the writ of Attachment, which is the original in this suit, and the record, so that the record had come into this Court without warrant; judgment.—Thereupon a writ came to the Justices "that notwithstanding the variance aforesaid or any other" they should proceed.—SCOT. We have the record here, and we know well that the party can not have any other record, as he could have out of the Treasury, and we have a writ to proceed.—*R. Thorpe*. The record came at first without warrant; and if you have since by writ warrant to proceed, then as there is a new warrant there must be new garnishment; wherefore to this writ of *Scire facias*, which has issued without warrant, we have not a day.—SCOT. We have a warrant to proceed, and the record is now our original; and even if we were now to abate this writ, a like writ would serve afterwards; wherefore answer; for we will not willingly delay any one.—And note that the successor sued Error on the judgment given against his predecessor; and in the *Scire facias* he was named

## No. 20.

faux jugement. Et auxi fust dit qe le Mair et baillifs **A.D. 1341.** ne duissent par proces de ley estre fait venir en tiel cas, mes de les mander par bref qil feissent venir pluis pleinement le record, come lem mande as autres Justices.—*Quære.*—*Et nota* qe ou suyters rendent jugement, la gist faux jugement; et ou autres par fraunchise ou par commission la gist erreur.—*Et nota processum* coment le record vient:—le Priour suyst bref a Vicounte *Pone per vadium*, hors de Chaucellerie, dattacher Mair et Baillifs de faire le record venir devant le Roi, retournable en Bank le Roi; et puis destresse issit.—Et il vindrent ove le record et ove qant qil avoient touchant le record.—Et variance fust assigne entre le bref dattachement, qest original a ceste suyte, et le record, issi qe le record est venu ceinz sanz garrant; jugement.—Sur quei bref vient as Justices *quod non obstante variatione prædicta seu quacunque alia* qil alassent avant.—**SCOT.** Nous avoms cy le record, et nous savoms bien qautre record ne poet partie aver, come il purriet aver hors de Tresorie, et nous avoms bref daler avant.—*R. Thorpe.* Le record vient primes sanz garrant; et si vous eiez puis par bref garrant daler avant, novel garrant novel garnisement; par quei a ceo bref de *Scire facias* nous navoms pas jour, qest issu sanz garrant.—**SCOT.** Nous avoms garrant daler avant, et le record est ore nostre original; et tout abatissoms ore ceo bref, autiel bref servireit apres; par quei responez; qar nous delaieroms nul homme a nostre voile.—*Et nota* qe le successeur suyst erreur du jugement taille contre son predecesseur; et fust nome en le *Scire facias* successeur, et

(*Placita coram Rege*, Easter, 15 Edward III. B<sup>e</sup>. 63). It is of great length, but there is printed, in the Appendix A. below, as

much of it as is necessary to render this important case intelligible.



## No. 21.

A.D. 1341. "successor," and in the warrant of attorney he was not so named; and nevertheless the warrant was adjudged sufficient.—*Redone* assigned for error that in the record of the assise of Fresh Force it is contained that the assise was taken, notwithstanding his protestation, against the Prior, though he alleged that he held by the King's charter, which he produced, and said that he did not think that without the King being consulted, &c., and the Master alleged that the tenements were holden of him, and amortised without his license, wherefore he entered, and so was seised, and, because the Master made himself a title, they awarded the assise without the King being consulted, and therein they erred. Another error was that they accepted that entry, as by reason of seignory, for a title, whereas by the King's seisin every seignory was extinguished, and therein they erred. And he assigned other errors.—They were adjourned. See more hereafter.

*Seire  
facias.*

(21.) § John son of Henry Broun sued a *Scire facias* against Thomas Broun and Joan his wife, to have execution of a fine by which Hamond Brown rendered certain tenements to Henry Brown, the demandant's father, and to the heirs of his body be-

## No. 21.

en garrant dattourne nient; et *tamen* le garrant fust A.D. 1341.  
 agarde sufficeant.—*Redone* assigna pur erreur de ceo qen  
 le record de frecheforce est compris et en lassise &c.  
 par protestation vers le Priour, et il alegea qil tient  
 par la chartre le Roi, et la moustra avant, et nentendi  
 pas qe le Roi nient conseil, &c., et le Mestre alegea  
 qe ceo fust tenu de lui, et, amorti sanz son conge, par  
 quei il entra, et issi fust seisi, et, pur ceo qil se fist  
 title, il agarderent lassise le Roi nient conseil, en  
 tant errerent. Un autre de ceo qil acceperent cel  
 entre par cause de seignurie title, ou par la seisine le  
 Roi chescune seignurie fust esteint, et en tant errerent.  
 Et autres errours.—*Adjornantur. Quære plus postea.*

(21.)<sup>1</sup> § Johan fitz Henri Broun suyt un *Scire Scire*  
*facias* vers Thomas Broun et Johane sa femme, pur *facias*.  
 aver execucion dune fyn par quele Hamond Brown  
 rendi certains tenementz a Henri Broun, pere le de-  
 mandant, et a ses heirs de soun corps engendres.—

<sup>1</sup> From L. alone, as far as the point at which the larger type ends. The record of this case is among the *Placita Coram Rege*, Easter, 15 Edw. III. R<sup>o</sup>. 28. According to the roll John son and heir of Henry le Brun (who appeared by guardian) brought the *Sci. fa.* against Thomas Broun and Joan his wife. According to his allegation the fine was levied (9 Edw. II.) between Henry le Brun, plaintiff and Hamond le Brun, deforciant. Henry acknowledged the right to Hamond, and Hamond granted and rendered to Henry in tail, with reversion to Hamond and his heirs, in respect of a messuage and land in Levinefeld (Linfeld) and Crowhurst in the County of Surrey. The tenants plead that John ought not to have execution because, long

before the levying of the fine, one William de Langenhirst, being seised of the tenements in his demesne as of fee, enfeofed the said Hamond and his wife Christina, to them and their heirs for ever, and Hamond and Christina had and continued seisin until the death of Hamond, and Christina the survivor continued seisin during all her life, and after her death Thomas entered as her cousin and heir (*i.e.*, as son of Richard son of Christina), and Thomas afterwards gave the tenements to Richard Heryng and Richard atte Grove, to them and their heirs for ever, and they were seised and afterwards enfeofed Thomas and Joan his wife. Of this the defendants tender averment, and they pray judgment whether John son of Henry

## No. 21.

A.D. 1841. gotten.—*R. Thorpe*. One B., before the fine, gave these tenements to Hamond (who so rendered) and to Christina his wife and to their heirs; and they continued that estate during the whole of Hamond's life; and, after Hamond's death, Christina was seised of that estate, and died seised; and, after her death, Thomas the defendant entered, as son and heir, and enfeoffed one Thomas, and the latter enfeoffed Thomas the defendant and J.; judgment whether execution, &c.—*Thorpe*. The estate which Hamond had at the time of the fine was by feoffment from one L. jointly to him and C. his wife and the heirs of Hamond; ready, &c.—And the other side said the contrary, as above.—But Thomas was Hamond's heir by blood.—*Quære* as to the plea that the demandant might have had for that cause, &c.

Scire  
facias.

§ *Scire facias* in the King's Bench upon a fine.—*Stouford*. He who rendered had nothing except jointly with our mother by purchase to them and their heirs, and our mother survived and continued the estate, and died seised, and after her death it descended to us as son; judgment whether you ought to have execution against us.—*Thorpe*. You have admitted the seisin of him who rendered, so that, if it was so, it was the husband's alienation, which must be executed, and you are put to your action if it was so. And afterwards he waived that point and said that he who rendered and his wife purchased to them and

## No. 21.

*R. Thorpe.* Un B., avant la fyn, dona ceux tenementz A.D. 1341. a Hamond, qe rendi, et Cristine sa femme et a lour heirs, quel estat ils continuerent tote la vie Hamond, apres qi mort Cristine fut seisi de cele estat et morust seisi, apres qi mort cesti Thomas entra com fitz<sup>1</sup> et heir et enfeffa un Thomas, le quel enfeffa cesti Thomas et J.; jugement si execucion, &c.—*Thorpe.* Lestat qe Hamond avoit al temps del fyn fuit par feffement un L. joint ove luy et a C. sa femme et [as] heirs Hamond; prest, &c.—*Et alii e contra, ut supra.*—Mes Thomas fuit heir Hamond de sank.—*Quere* del plee qe le demandant puit aver eu par cel cause, &c.

§ *Scire<sup>2</sup> facias* en Bank le Roi hors dun fine.—*Stouf.* Celni *Scire facias.* qe rendist navoit rien si noun joynt ove nostre mere par lour purchas a eux et lour heirs, et nostre mere survesquist, et continua, et morust seisi, apres qi mort descendi a nous come a fitz; jugement si vers nous execucion devez aver.—*Thorpe.* Vous avez connu la seisine celui qe rendist, issi qe, si issi fust, oeo fust lalienacion le baroun, quele covendreit estre execut, et vous mys a vostre accion si issi fust. Et puis le weyva et dit qe celui qe rendist et sa femme purchacerent a eux et

ought to have execution. The plaintiff (not acknowledging that Christina survived Hamond) replies that Thomas and Joan ought not to preclude him from execution for the reason alleged, because John atte Pute was seised in his demesne as of fee of the messuage and 5 acres of land in Crowhurst out of the tenements aforesaid, and enfeofed thereof Hamond and Christina to them and the heirs of Hamond; and William de Wyntreshulle was seised in his demesne as of fee of two acres of meadow in Crowhurst out of the tenements aforesaid, and enfeofed thereof Hamond and Christina to them and the heirs of Hamond; and one William son and heir of John

de Whetyngdon enfeofed Hamond and Christina of 27 acres of land in Levinefeld out of the tenements aforesaid, to Hamond and Christina, and the heirs of Hamond, the grandfather of Thomas, whose heir he is. Of this he tenders averment, and he prays judgment and execution. The defendants rejoin that Hamond and Christina were seised, to hold to them and their heirs, and not to them and the heirs of Hamond. Thereupon issue was joined. The *Venire* was awarded. On the day given the defendants failed to appear, and judgment was given for the plaintiff to have execution.

<sup>1</sup> L., fyn.

<sup>2</sup> This report of the case is from T. alone.

## No. 22.

A.D. 1341. the heirs of the husband ; ready, &c.—And the other side said the contrary.—*Quare*, for the first was a good answer to all appearance.

Scire  
facias.

§ John son of Henry Broun sued, in the King's Bench, a *Scire facias* on a fine, against Thomas Broun and Joan his wife who pleaded to the inquest. On another day *Blaik* said:—You are yourself tenant through the disseisin which you effected since the last day ; judgment of the writ.—*Thorpe*. If you could have this plea we should be delayed by process infinite ; besides, the plaintiff is under age, and nothing is lost to you, for you can have an assise, and our judgment will be void, if you say what is true.—Afterwards they made default when the inquest was sworn.—Therefore execution was awarded, &c.—But the Court was minded to have tried the execution by the same inquest, if the party had abode judgment on the execution.

Contempt.

(22.) § The King by writ commanded the Abbot of Sherborne to admit John Tassant to puture, and living, and clothing in the Abbey, and to cause him to have sustenance such as one R. had in the said Abbey by command of the King the father of the present King. And by reason of that command the Abbot admitted John Tassant. But afterwards John Tassant made a suggestion in Chancery that he had not his sustenance so fully as R. had had. Thereupon a certain commission issued to certain persons to enquire what sustenance R. had in his time and in what manner. And the inquisition was returned into the Chancery and sent into the King's Bench, upon which a writ of Contempt issued against the Abbot to show cause why he had not, on the King's command, admitted John Tassant as above.—The Abbot came and said that neither R. nor any other person was ever admitted into the Abbey by virtue of the King's command, but only out of respect to the King and at the request of Kings ; and also he said that this R. had not received as much as was found by the inquest of office : and on this they were at issue.—And when the Inquest came, *Thorpe* said, You ought not to take this inquest, for the Abbot has admitted the contempt before the

## No. 22.

les heirs le baroun; prest, &c.—*Et alii e contra.*—*Quere*, qar A.D. 1341.  
le primer fust bon respouns a ceo qe semble.

§ Johan<sup>1</sup> fitz Henre Broun suyst un *Scire facias* hors dun Scire fyn, en baunk le Roy, vers Thomas Broun et Johane sa femme *facias*. qe plederent a lenqueste. A autre jour, *Blak*:—Vous mesmes estes tenant par vostre disseisine que vous festez pus le dreyn jour; jugement de bref.—*Thorpe*. Si vous porrez aver ceo plee nous serroms delaisie par proces infinite; estre ceo, le pleyntif est deins age, et rien vous depiert, qar vous poiez aver assise, et nostre jugement serra voide, si vous diez verite.—Pus ils fesoient defaute quant lenqueste fuit juree; par quei execucion fuit agarde, &c.—Mes la Couer fuit en purpos daver trie lexecucion par mesme lenqueste si la partie ust demore sur lexecucion, &c.

(22.)<sup>2</sup> § Le Roi manda par bref a Labbe de Schyr-Contempt. burne qil rescerveroit Johan Tassant a puture, et vivre, et vesture, en Labbe, et autiel sustinaunce fait aver come un R. avoit en mesme Labbe par mandement le Roi pere le Roi qor est. Et par cel mandement Labbe resceut Johan Tassant. Mes puis il fist suggestioun en Chauncellerie qil navoit pas si pleinement sa sustenance come R. avoit eut; sur quei certeine commission issist a certeinz gentz denquere quele sustenance R. avoit en son temps et en quel manere. Et lenquest retourne en Chauncellerie et mande en Bank le Roi, hors de qi bref de contempt issit vers Labbe pur quei il navoit resceu, al mandement le Roi, Johan Tassant *ut supra*.—Labbe vient et dit qe R. ne nul autre unques ne fust resceu en Labbe par mandement le Roi, mes a la reverence de lui et de priers de Rois; et auxi dit qe celui R. navoit pas resceu tant come trove par lenquest doffice; et sur ceo sont a issu.—Et quant lenquest vient, *Thorpe*, Vous ne devez prendre cest enquest, qar Labbe ad conu le contempt devant le Roi

<sup>1</sup> This report of the case is from L. alone, where, however, it appears

as of the Trinity Term next following.

<sup>2</sup> From T. alone.

## No. 23.

A.D. 1341. King himself, and it is of record in the Wardrobe.—  
 SCOT. The King is deprived of nothing by this inquest, and perchance it will pass for the King; and that which you allege is not of record.—*Thorpe*. Certainly it is; for the King in his own presence recorded and received homage and fines; and if this is entered in his Treasury, though, perhaps, it is not sent in, yet in another place it shall be vouched as a record, and you will not take an inquest, when such a matter is alleged, without being apprised of the fact.—And afterwards the inquest was taken. And note that it seems strange that the Inquest was charged upon divers points, that is to say as to whether other persons had been admitted by virtue of the King's command or not, also whether they had received as much as was found by the inquest of office or not, and a third point as to whether as much had been withheld from John Tassant as he complained or not; for on issue joined by the parties the enquiry should be made on a certain point.

Contempt. (23.) § Contempt, against another Abbot, for that the House would not admit the King's presentee to a corody, in his Abbey, such as one B. had in the Abbey on the command of the King's father. The Abbot came and said, by *Pole*, that he did not acknowledge that the King sent a writ to him; but he said that no one had ever been admitted on the King's command but only at the King's request; and he said that our Lord the King had confirmed the charters of his progenitors by which they granted that the Abbots of the said house should hold, quit of all demands and exactions, as against the Kings and their heirs. And he produced the charters confirmed, and said that the King would not in opposition to those deeds be answered. And he said further that this B., whom the King supposed to have been previously admitted on the command of the King's father, was not admitted

## No. 23.

mesme, et cest de record en la Gardrobe.—SCOT. Rien A.D. 1341. depert au Roi par cest enquest, et par cas ele passera pur le Roi; et ceo qe vous alegez nest pas de record. *Thorpe*.—Certes si est; qar le Roi en sa presence demene recorda et resceit homage et fines; et si ceo soit entre en sa Tresorie, et nest pas par cas mande, uncore en autre place ceo serra vouche come record, et vous ne prendrez pas enquest, quant tiel chose est alege, sanz estre apris.—Et puis lenquest fust pris.—*Et nota* qe semble merveille qe lenquest fust charge sur divers pointz, saver si autres furent resceu par mandement le Roi ou noun, auxi sil ussent resceu tant come est trove par enquest doffice ou noun, et le terce point uncore si tant fust sustret a Johan Tassant come il se pleint ou noun; qar a myse des parties il serreit pris sur certain point.

(23.)<sup>1</sup> § Contempt vers un autre Abbe de ceo qil Contempt. ne voleint resceivere son presente a un corodie, en sa Abbe, tiel come un B. avoit en Labbeye al mandement le pere le Roi, qe vient et dit, par *Pole*, qil ne conisast pas qe le Roi manda a lui bref, mes dit que unqes nul fust resceu par mandement le Roi mes a sa priere; et dit qe nostre seignur le Roi ad conferme les chartres ses progenitours par quels ils grantent qe Labbe mesme la mesoun tindreint, quites de toutes demandes et exaccions, vers les Rois et lour heirs, &c., et les moustra avant confermes, et dit qe le Roi ne voleit contre ses fetes estre respondu. Et dit outre qe celui B., qe le Roi suppose estre resceu a devant par mandement son pere, ne fust pas resceu al mandement

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<sup>1</sup> From T. alone.



## No. 24.

A.D. 1341. on the command of the King the present King's father, but by his own purchase and bargain freely bought it with his money; ready, &c. And, as to the contempt, he said that the Abbot had received no writ on behalf of the King; ready, &c.—*Thorpe*. Ready, &c., the contempt on the receipt of writs. And, as to the other point, he traversed the King's right, and the King's possession also; let him hold to one.—*Pole*. If we plead to the right, the possession is admitted for the King, and *e contra*.—And, notwithstanding, he was compelled by the COURT to hold to one.—*Pole*. We do not admit that the King has right; but we tell you, as above, that B. was never admitted into the House on the command of the King the father of the present King but on his own purchase; ready, &c.

Right of  
advowson. (24.) § Note that on a writ of Right of Advowson *Thorpe* joined the mise in this manner:—The Abbot denies tort and force and the right, &c., absolutely, and fully admits the seisin of the demandant's ancestor, on whose seisin he demands, which ancestor was seised of the advowson as appendant, &c., and gave one acre of land with the advowson to our predecessor, &c., for ever,

## No. 24.

le Roi le pere, mes de son acat et bargayn fraunchement A.D. 1341. lachata par ses deners; prest, &c. Et, qaunt a contempt, it resceut nul bref de par le Roi; prest, &c.—*Thorpe*. Prest, &c., le contempt. sur la resceite de breffs. Et quant a lautre point il traversa le dreit le Roi, et sa possession auxi; se teigne a lune.—*Pole*. Si nous pledoms al dreit, la possession est conest pur le Roi, *et e contra*.—*Et non obstante*, il fust chace de prendre a lun par COURT.—*Pole*. Nous ne conisoms pas qe le Roi ad dreit; mes vous dioms, *ut supra*, qe B. ne fust unques resceu al mandement le Roi le pere ceinz, mes par son acat demene; prest, &c.

(24.)<sup>1</sup> § *Nota* qen bref de dreit davowesoun, *Thorpe*. Dreit davowesoun. joyn<sup>t</sup> la myse en cest manere:—Labbe defend tort et force et le dreit, &c., tout atrenche, et bien conust la seisine son auncestre de qi seisine il demande, le quel fust seisi del avoesoun come appendant &c., le quel dona une acre, &c., ove lavoesoun a nostre predecessour, &c., par

<sup>1</sup> From T. alone. The record of the case is in the *Placita de Banco*, Easter, 15 Ed. III. R<sup>o</sup>. 109, d. It there appears that the writ of Right of Advowson was brought by Gervase de Bray against the Prior of the Hospital of St. John of Jerusalem in England, in respect of the advowson of the church of St. Cleere in Cornwall. He counted that Reginald de Mareys, his ancestor, was seised of the advowson in the time of King John, and presented a clerk who was admitted and instituted, and who took esples (i.e., tithes, &c.). From Reginald the right descended to Beatrice his daughter and heir, from her to Gervase her son and heir, from him to Michael his son

and heir, and from Michael to the demandant Gervase as son and heir. The Prior, in his plea, admitted the seisin of Reginald, the ancestor, but alleged that Reginald "per chartam suam dedit " et confirmavit, in puram et perpetuam elemosinam, Hospitali " Sancti Johannis Hierosolymitani, " et pauperibus Hierosolymorum, " et fratribus ibidem Deo servantibus, ecclesiam predictam, per " nomen ecclesie Sancti Clari " de Rederadoc," that afterwards (in the time of Henry III.) a fine was levied between the then Prior of the Hospital, plaintiff, and Ingelram de Bray and Beatrice his wife daughter and heir of Reginald "impedientes," who ac-

## No. 25.

A.D. 1341. by this deed; and afterwards his daughter, through whom the demandant has descent, together with her husband, by fine released to our predecessor, &c.; and the Abbot puts himself on God and the Grand Assise whether he has greater right to hold the advowson, &c., by feoffment, &c., and by release, &c., as his right as he holds it, or the demandant to have the said advowson, &c., as that which has descended to him from his father, and which descended to his father from his grandfather and so step by step as far as the ancestor who was seised, &c., as his right, as he demands.—*Blaik* imparled, and came back, and said:—We make protestation that we do not admit that she who released was our ancestor, and we pray that this may be entered, and let the mise stand.—*HILLARY*. Certainly no protestation shall be entered; but either take exception to the mise at your peril or leave it; for I tell you plainly that nothing of what he states can be said hereafter to be accepted by you except that the mise may stand.—*Blaik*. Then let it stand.

Detinue  
of a  
writing.

(25.) § Detinue of a writing. The defendant said that the writing was delivered to him on a certain condition, as the plaintiff supposed by his count, and on another condition also, and that he did not know whether the conditions had been fulfilled; and he prayed a *Scire facias* against another, and he had it.—And note that although he alleged another condi-

knowledge the advowson to be the right of the Prior and Brethren of the Hospital "et illam remis-  
" serunt et quiete clamaverunt de  
" se et heredibus ipsius Beatricis  
" eidem Priori et successoribus  
" suis et prædictis fratribus in

"perpetuum." The mise to the Grand Assise was then joined. After several adjournments "*Ger-*  
" *vasius non venit*," and judgment was given for the Prior and his successors.

## No. 25.

ceo fet, a touz jours; et puis sa fille, parmy qi il ad A.D. 1341. descente, ensemblement ove son baroun, par fine releassa a nostre predecessour, &c.; et se met en Dieu et la grande assise le quel il ad moeut dreit a tenir lavoessoun, &c., par feffement, &c., le quel relees, &c., come son dreit come il le tient, oue le demandant daver la dite avoessoun, &c., come ceo qe lui est descendu de son pere, et qe descendi a son pere de son ael, et *sic gradatim* tanqe a launcestre et fut seisi, &c., come son dreit come il le demande.—*Blak* enparla et revient et dit:—Nous fesoms protestacion qe nous ne conisoms pas cele qe releassa estre nostre auncestre, et prioms qil soit entre, et estoise la myse.—*HILL*. Certes nule protestacion<sup>1</sup> serra entre; mes ou chalanges la myse a vostre peril ou lesses; qar jeo vous die bien qe rien poet estre dit apres ses houres accepte de vous de ceo qil parle mesqe la mise estoise.—*Blayk*. Estoise donques.

(25.)<sup>2</sup> § Detenu descript. Le defendant dit qe lescript Detenu  
descrie. lui fust baille par certeine condicion, come le pleintif suppose par cont, et par autre condicion auxi, et il ne siet si les condicions soient tenuz; et pria *Scire facias* vers lautre, et avoit.—*Et nota*, coment qil alege autre

<sup>1</sup> T., proces.

<sup>2</sup> From T. alone. The record of this case is probably that found in the *Placita de Banco*, Easter, 15 Ed. III. R<sup>o</sup>. 135, d. It there appears that "Magister" Hugh de Walmesford brought the action against Geoffrey de Edenham, canon of the church of St. Mary, Lincoln. The plaintiff's count or declaration was that he delivered the *scriptum* (of which the purport is recited) to the defendant, on condition that if Thomas le Boteler,

of Lincoln, should levy a fine, within a month of Easter next following, to the said Hugh, of a certain messuage in fee, the *scriptum* should be delivered to the said Thomas, and that if Thomas should not so levy such fine the *scriptum* should be delivered to Hugh, that Thomas had not so levied the fine within the time, and that the defendant, though asked, refused to deliver the *scriptum*. The defendant, in his plea, admitted the delivery to him of the

Nos. 26, 27.

A.D. 1341. tion whereof the plaintiff did not count, that was not taken as a traverse, because he admitted the condition stated in the count.

Waste. (26.) § Waste. After the verdict had passed, a wife prayed to be admitted on the default of her husband, and her prayer was counterpleaded because the verdict had passed, for she had time to make her prayer when the inquest was awarded.

Waste. (27.) § Waste against a termor; and the plaintiff counted that the term had commenced.—*Thorpe*. You leased to us by this deed, to hold to us and our heirs for ever; judgment whether an action, &c.—*Kelshulle*. The date of that deed is earlier than the lease which was made to you for a term, wherefore that is not an answer.—*HILLARY*. Is it your deed? For if you enfeoffed, and afterwards returned to the land, and leased, &c., you shall say so.—*Kelshulle*. We leased by this deed for a term (and he put forward an evidence) without this that anything passed by the other feoffment; ready, &c.—*Thorpe*. You shall not be admitted to aid yourself now by that deed, since you did not use it at the commencement. And then he said that the land passed by the feoffment; ready, &c.—And the other side said the contrary.

*scriptum* on the said conditions, but alleged that he was altogether ignorant whether the conditions had been fulfilled or not, and prayed a writ “ad præmunien-  
“dum præfatum Thomam.” A *Sci. ja.* accordingly issued to bring Thomas to show cause why the *scriptum* should not be delivered to Hugh. The parties and Thomas subsequently appeared, and Geoffrey produced the *scriptum* and said he was ready to deliver it

to whom the Court should adjudge. Thomas said that he came into Court “ad præfatum mensem” ready to levy the fine, and William [apparently a mistake in the roll for Hugh] did not come “sed se  
“gratis absentavit. Unde petit  
“judicium, &c.” Hugh said that “ad præfatum mensem” Thomas did not come into court ready to levy, &c. Issue was joined as to that question of fact, and a *Venire* was awarded.

## Nos. 26, 27.

condicion qe le pleintif ne conta, ceo ne fust pas pris a A.D. 1341. travers, qar il conusast la condicion en le conte.

(26.)<sup>1</sup> § Wast. Apres verdist passe, une femme pria Wast. destre resceu par la defalte son baron, et fust contreplede eo qe verdit est passe, qar ele avoit temps daver pria qant lenquest fust agarde.

(27.)<sup>2</sup> § Wast vers termier, et conta qe le terme com- Wast. encea.—*Thorpe*. Vous nous lessastes<sup>3</sup> par ceo fet a nous et a noz heirs a touz jours; jugement si accion.—*Kels*. La date de cel fet est eisne qe le lees qe<sup>4</sup> se fist a vous a terme, par quei ceo nest pas respons. *HILL*. Est ceo vostre fet? Qar si vous feffastes, et puis revenistes a la terre, et lessastes, &c., ceo dirrez vous.—*Kels*. Nous lessames par ceo fet a terme (et bouta avant une evidence) sanz ceo qe rien passa par lautre feffement; prest,<sup>5</sup> &c.—*Thorpe*. Vous ne serrez pas resceu de vous eider ore par ceo fet, del houre qe vous usastes pas a comencement. Et puis dit qe la terre passa par la feffement; prest, &c.—*Et alii e contra*.

<sup>1</sup> From T. alone.

<sup>2</sup> From T. alone, as far as the point at which the larger type ends. It appears by the record (*Placita de Banco*, Baster, 15 Edw. III. R<sup>o</sup>. 63, d.) that the action was brought by Thomas de Birston against Adam de Billoby, parson of the church of Eggefeld (Edgefield, Norfolk) and Thomas Rolleman.

<sup>3</sup> The words corresponding with "lessastes" in the roll are "cessit, dedit, et confirmavit."

<sup>4</sup> T., ne.

<sup>5</sup> The replication on which issue was joined was, according to the record, the following:—"quod ipse "dimisit prædictis Adæ et Thomæ "Rolleman tenementa prædicta ad "terminum annorum, absque hoc "quod tenementa illa unquam tran- "sierunt in possessionem ipsorum "Adæ et Thomæ Rolleman virtute "chartæ prædictæ."

## No. 28.

A.D. 1841. § Upon a writ of Waste against tenant for term of years  
 Waste. *Thorpe* said:—You ought not to be answered as to this writ, because you enfeoffed us by this charter; judgment, &c.—*Kelshulle*. We will aver that you hold for a term by our lease.—And upon that they abode until the morrow.—*Kelshulle*. You took these tenements for a term by this deed indented, without this that anything passed by the charter.—*Thorpe*. You shall not now be admitted to deprive us, by the deed for a term, of the advantage of the charter, since you did not make use of the deed when you commenced; and moreover you shall not be admitted since you have tendered an averment, upon which we were adjourned, and you did not make use of this deed at that time.—Nevertheless, the issue was received as to whether estate passed by the charter or not, &c.

Account. (28.) § Account against one who came by the Exigent and traversed the receipt. And, before he had found mainprise, *Gayneford*, for the plaintiff, showed how he who brought the writ of Account had made a Statute Merchant to the defendant, and then the defendant had sued execution and had his lands, and caused a manor to be extended at 40*d.*, which was worth £20; and he said that he had made satisfaction to the defendant for part of the debt, for which he showed an acquittance, and the defendant had levied part from his lands, and the residue was here ready. And he had the money in a bag. And Sir (said *Gayneford*), the defendant had a day by the Grand Distress to answer us as to his deeds, and we pray that he be put to answer.—*Pole*. Call him on this writ; for he makes default.—HILLARY. He is still in custody in the Fleet, and he shall not lose his issues while he is in custody; and therefore bring him to the bar.—And the writ was read; and the writ purported that another, to whom he had leased his estate in the land, should be warned also, and the latter did not come.—*Gayneford*. That is of no consequence, for the defendant alone is party to his deeds.—HILLARY. Why then have you named the other?—*Thorpe*. One

## No. 28.

En<sup>1</sup> un bref de Wast vers le tenant al terme des auns A.D. 1341. *Thorpe*:—A ceo bref ne devez estre respondu, qar vous nous Wast. enfeffa[stes] par ceste chartre; jugement, &c. — *Kell*. Nous [Fitz. voloms averer qe vous tenez a terme de nostre lees.—Et sour *Estoppel*, ceo ils demorrerent tanqe lendemayn. — *Kell*. Vous pristez 236.] ceux tenementz a terme par ceo fait endente, sanz ceo qe rien passa par la chartre.—*Thorpe*. Vous navendrez pas ore, par lesscript al terme, de nous toller lavantage de la chartre, del houre qe vous ne usastes<sup>2</sup> pas quant vous comenciez;<sup>3</sup> et auxint navendrez pas del houre qe vous avez tendu daverer sour quel nous sumes ajourne, a quel temps vous ne usastes pas ceo fait.—*Tamen* lissue fait resceu le quel estat passa par la chartre ou noun, &c.

(28.)<sup>4</sup> § Acompt vers un qe vient par lexicgend et Acounte. traversa la resceite. Et, devant qil avoit trove [Fitz. meynprise, *Gayn*., pur le pleintif, mostra coment s.] *Respond*, celui qe port le bref dacompt avoit fait un estatut marchant al defendant, et puis suyst execucion et avoit ses terres, et fist esteindre un manoir a xl. deners qe vaut xx. livres; et dit qil avoit fait gree a lui de partie de la dette, dont il moustra acquittance, et partie ad il leve de ses terres, et le remenant est cy prest. Et avoit les deners en une bagge. Et, Sire, il ad jour par la grand destresse vers nous a respondre a ses fetes, et prioms qil soit mys de respondre.—*Pole*. Demandez lui a ceo bref; qar il fait defalte.—*HILL*. Il est uncore en garde de Flete, et il ne perdra pas ses issues tanqil est en garde; et pur ceo les menes a la barre.—Et le bref fust lieu, et le bref voleit qun autre, a qi il avoit lesse son estat de la terre, fust garny auxi, et celui ne vient pas.—*Gayn*. Il ny ad force, qar celui est soul partie a ses fetes.—*HILL*. Pur quei avez donqes nome lautre? — *Thorpe*. Lun est

<sup>1</sup> This report of the case is from L. alone.

<sup>2</sup> I., wast.

<sup>3</sup> I., conustrez.

<sup>4</sup> From T. alone.



## No. 28.

A.D. 1341. is named because he is party to the deeds, and the other because he is tenant, because he might have a release, as another defence, and so they are named for different purposes.—HILLARY. If the other were here and were to produce your release, would he who is now in court be driven to answer as to his acquittances?—*Thorpe*. Yes, Sir, certainly; for the release might be found to be false.—HILLARY. We are not advised whether one shall answer without the other or not; and we can not delay him against whom the Exigent has issued from his mainprise, nor will you deprive him of it: wherefore we acknowledge his mainprise and will record his appearance.—And so it was done.—And note that the mainpernors were challenged; and a prisoner can not be a mainpernor.—And the defendant made his attorney as to the *Venire facias*.—*Gayneford*. It purports "to account," wherefore he can not have an attorney.—This was not allowed.—*Thorpe*. Let him answer to those deeds.—*Pole*. He can not without the other, who is ter-tenant; for naturally the ter-tenant shall account and have the money which is now tendered.—HILLARY. What you say is wrong; you who are party shall account, and shall have the money also; and as to having the land again, that can well be done afterwards.—And he was put to answer to the deeds.—*Pole*. You see clearly how by this writ it is supposed that we have received part of the debt, and that he is ready to pay the residue, supposing thereby that the debt is not fully levied; and the Statute Merchant by which we have execution, as is supposed, purports that we hold the land to us and our assigns until the debt and the damages be levied from the issues; judgment of this writ which is not warranted by law.—*Thorpe*. That of which you have given us acquittance is sufficiently levied, and you have the residue since we

## No. 28.

nome pur ceo qil est partie as fetes, et lautre pur A.D. 1341.  
 ceo qil est tenant, pur ceo qil purreit aver relese  
 en autre defense, et issi sont il nomes a divers  
 regardes. — HILL. Si lautre fust cy et meist avant  
 vostre relees, serreit celui qest ore en Court chace de  
 respondre a ses acquitances? — Thorpe. Certes, Sire,  
 oile; qar le relees purreit estre trove faux. — HILL  
 Nous ne sumes pas avise si lun respoundra sanz lautre  
 ou noun; et nous ne poms delaier lui de sa meynprise,  
 ne demettres pas; par quei nous reconisoms sa meyn-  
 prise et recorderoms sapparaunce. — *Et ita factum est.* —  
*Et nota* qe les meynpernours sont chalenges, et prisone  
 ne poet estre meynpernour. — Et il fist son attourne  
 quant al *Venire facias*. — Gayn. Il dit acompter, par  
 quei attourne ne poet il aver. — *Non allocatur.* — Thorpe.  
 Respoigne a ceo fetz. — Pole. Il ne poet sanz lautre qest  
 terre tenant; qar naturelment terre tenant acomptera  
 et avera largent qest tendu ore. — HILL. Vous dites  
 mal; vous accompteres qestes partie et averez largent  
 auxi; et qant a reaver la terre, homme poet bien apres  
 faire. — Et il fust mys de respondre a les fetes. — Pole.  
 Vous veez bien coment par ceo bref est suppose qe  
 nous avoms resceu partie de la dette, et qil est prest  
 de paier le remenant, supposant par tant qe la dette  
 nest pas pleinement leve; et lestatut marchant par quel  
 nous avoms execucion, a ceo qest suppose, voet qe nous  
 tenoms la terre a nous et noz assignes tanqe la dette  
 et les damages soient levez des issues; jugement de  
 ceo bref qe nest pas garranti par la ley. — Thorpe. Ceo  
 dont vous nous avez acquite assetz est il leve, et le  
 remenant avez del heure qe nous sumes prest de faire

## No. 29.

A.D. 1341. are ready to make payment to you, and the land is delivered only by way of pledge until satisfaction be made; for by law we can avow so as to oust you when we have paid or are ready to pay the money which is due; and I say that you shall not have the money after you have demised, for you have taken from your assignee that which you ought to have had, and therefore the money shall be paid to him; and, since you do not deny the defendant's deeds, judgment.—*Pole*. We are pleading to the writ.—HILLARY. The writ is good enough, for it is our judicial writ issued on a writ which came to us on the case out of the Chancery.—Therefore the deeds were read; and as to one deed *Pole* denied it; and as to the other (said he) the deed purports "in part payment" of so much in which he is bound by his writing obligatory, which can not be understood of this debt, because this is of record and of a different nature; wherefore the law does not put us to answer.—BASS. One shall make himself an obligation on a Statute Merchant, and thus it is sufficiently a writing obligatory; and the sum in the acquittance agrees with the Statute; wherefore, &c.—*Pole* denied the deed.—And note that with regard to accounting nothing shall be done until the inquest have passed.

Prayer of  
Aid of the  
King.

(29.) § A tenant prayed aid of the King, and had it.—And the King sent &c., to proceed.—And then the tenant vouched W. de Roos and his wife, and the Earl of Oxford and his wife, and J. Typtost and his wife, as cousins and heirs of John Clare.—*Thorpe*. You have prayed aid of the King by reason of a feoffment, which prayer is in lieu of voucher; judgment whether now to vouch, &c. And the King has directed you not to go to judgment without his being consulted, supposing the charge to fall upon him; and if the

## No. 29.

vostre assetz, et la terre vous est livree forsqe en gage A.D. 1341. tanqe gree soit fait; qar par ley nous purroms avowere de vous ouster quant nous avoms ou sumes prest de paier les deners dues; et jeo die qe vous naverez pas les deners apres ceo qe vous avez demys, qar vous avez pris de vostre assigne ceo qe vous duissez aver ew, et pur ceo a lui serront les deners paies: et, del heure qe vous ne dedites ses fetes, jugement.—*Pole*. Nous pledoms au bref.—*HILL*. Le bref est assetz bon, qar cest nostre judicial qest issu du bref qe nous vient sur le cas de la Chauncellerie.—Par quei les fetes furent lieux; et quant a lun fet, *Pole* le dedit; et quant a lautre le fet voet *in partes solutionis* de tant dont il est oblige par son escript obligatorie, qe ne poet estre entendu de ceste duite, qar cest de record et dautre nature; pur quei la ley ne nous mette a respondre.—*BASSET*. De statut marchant homme se<sup>1</sup> fra obligacion, et issi assetz est il escript obligatorie; et la summe en lacquittance sacord al estatut; par quei, &c.—*Pole* le dedit.—*Et nota* en dreit del acompter rien serra fait tanqe lenquestes soient passez.

(29.)<sup>2</sup> § Un tenant pria eide du Roi, *et habuit*.—*Aid prier du Roi*. Et le Roi manda &c., de procedere.—Et donques il voucha W. de Roos et sa femme, et le Count Doxford et sa femme, J. Typtost et sa femme, come cosyns et heirs Johan Clare.—*Thorpe*. Vous avez prie en eide du Roi par cause de feffement, qest en lieu de voucher; jugement si ore a voucher. Et le Roi vous ad mande qe vous nirrez pas a jugement lui nient conseil, supposant la charge chere sur lui; et si le voucher

<sup>1</sup> T., ne.<sup>2</sup> From T. alone until otherwise stated.

## No. 29.

A.D. 1341. voucher were allowed the loss would fall upon the vouchees, and none on the King; therefore there would be no need to consult with the King, and consequently if the voucher were allowed, the first process would not be continued.—*Pole*. The aid-prayer was not in lieu of voucher, for the King was prayed in aid because John de Clare, ancestor of the vouchees, rendered the land into the hand of the King to the use of our ancestor, in which case, although the King enfeoff he is not bound to warrant, but he is bound who rendered to the King and his heirs.—And by the opinion of the COURT he shall have the voucher.—Therefore *Blaik* traversed, saying, Neither the vouchees nor their ancestor ever had anything since the seisin of our ancestor.—*Quære*, for it seems that the voucher is not now allowable, or else the aid of the King was granted contrary to reason.

Præcipe  
quod  
reddat.

§ On a *Precipe quod reddat* the tenant said that King Edward the father of the present King enfeoffed his ancestor, and showed a charter purporting that one C. rendered the tenements to the King to the use of one who was the ancestor of the tenant, and that the King had given them to that ancestor in fee; and aid was granted.—Afterwards a writ came to proceed, &c.—*Stouford*. Judgment, &c.—Afterwards the tenant vouched the heirs of the person who rendered to the King.—*R. Thorpe*. You shall not be admitted to such a voucher, for you prayed aid of the King on the ground of a charter of feoffment, which aid is in lieu of voucher.—*Pole*. There is no warranty in the charter, and the deed conveying to the King was only on condition that he should enfeoff our ancestor.—*R. Thorpe*. Neither the vouchees nor any of their ancestors were ever seised, &c, since the seisin of our ancestor, &c.

## No. 29.

fust suffert la perde cherreit sur eux et rien sur le A.D. 1341  
 Roi; par quei il ne serreit pas mestier de conseiller  
 au Roi, et *per consequens*, si le voucher fust suffert,  
 le primer proces ne serra pas continue.—*Pole*. Leide  
 priere ne fust pas en lieu de voucher, qar le Roi fust  
 prie pur ceo qe Johan de Clare, auncestre les vouches,  
 rendist la terre en la mayn le Roi al oeps nostre  
 auncestre, en quel cas, mesqe le Roi feffe il nest pas  
 tenu de garrantir, mes est celui qe rendist au Roi [Fitz.  
 et ses heirs. Et par oppinion de COURT il avera le Voucher,  
 voucher.—Par quei *Blayk* traversa qe les vouches ne 111.]  
 lour auncestre navoint unques rien pus la seisine nostre  
 auncestre.—*Quære*, qar il semble qe le voucher nest  
 pas ore suffrable, ou autrement leid fust graunte contre  
 resone du Roi.

§ En<sup>1</sup> un *Præcipe quod reddat* le tenant dit qe le Præcipe  
 Roy E. pere enfeffa soun auncestre, et moustra chartre quod  
 qun C. rendi lez tenementz al Roy al oeps un laun- reddat.  
 cestre le tenant et qe le Roy lavoit done en fee a li;  
 et leied grante.—Pus vynt bref daler avant, &c.—  
*Stouf*. Jugement, &c.—Pus le tenant vouche lez heirs  
 celui qe rendy a Roy.—*R. Thorpe*. A tiel voucher  
 navendrez pas, qar vous priastez eide de Roy par  
 chartre de feffement, qe est en lieu de voucher.—*Pole*. [Fitz.  
 Il nad pas garrantie en la chartre, et le fait le Roy Voucher,  
 ne fut fors sour condicioun de feffer nostre auncestre. 21.]  
 —*R. Thorpe*. Le vouches ne nul de lour auncestres  
 ne furent unques seisi, &c., pus la seisine nostre  
 auncestre, &c.

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<sup>1</sup> This report of the case is from L. alone.

## No. 30.

A.D. 1341. (30.) § Annuity, where the specialty purported that  
Annuity. it was granted for tithes, and of this the count did not  
make any mention, but was simple. And exception was  
taken to the count. And because the defendant abode  
judgment upon that, and would not say anything else,  
HILLARY adjudged that the plaintiff should recover the  
annuity and his damages taxed by the Court.

## No. 30.

(30.)<sup>1</sup> § Annuyte, ou lespecialte voet qe ele fust grante pur dismes, de quei le cont ne fait mencion, mes fust simple. Et cest chalenge. Et pur ceo quil demora sur ceo et autre chose ne voleit dire, HILL. agarda qil recoverast lannuyte et ses damages taxez par la Court.

A.D. 1341.

Annuite.

<sup>1</sup> From T. alone. A record of a case, which in some respects resembles this, appears in the *Placita de Banco*, Easter, 15 Edw. 3 R<sup>o</sup>. 71. One Nicholas, chaplain of the chapel of St. Edward, Fulbourne (in the county of Cambridge) was plaintiff, and Luke Primerole, parson of the church of Saint Vigor, Fulbourne, was defendant. The count or declaration was "quod quidam Ricardus quondam persona ecclesiæ Sancti Vigoris de Fulburne prædecessor prædicti Lucæ nunc personæ, &c. . . . per scriptum suum concessit se teneri Deo, et Sanctæ Mariæ, et Capellæ Sancti Edwardi, quæ sita est in Curia quæ fuit Gilberti de Tany in Fulburne, et capellano ibidem Deo et Sanctæ Mariæ et beato Edwardo pro tempore ministraturo, in quadraginta solidis annuis ad terminos Sancti Michaelis et Paschæ per æquales portiones solvendis et percipiendis de dicta ecclesiæ et de personis ejusdem ecclesiæ, qui pro tempore fuerint, in perpetuum Et quidam Eustachius, tunc Episcopus Eliensis, loci illius Diocesanus, de assensu et voluntate Gilberti filii Guarini, tunc patroni prædictæ ecclesiæ de Fulburne, et Ricardi tunc personæ ejusdem, per scriptum

"suum concessit et confirmavit  
"ad servitium capellæ prædictæ  
"et capellano in eodem capella  
"pro tempore ministranti prædictum annuum redditum quadraginta solidorum, . . . . . Et  
"postmodum quidam Guarinus  
"filius Gilberti tunc patronus  
"ejusdem ecclesiæ per chartam  
"suam prædictas concessionem et  
"confirmationes prædictorum Episcopi et Ricardi personæ, &c.  
"ratificavit et confirmavit Posteaque quidam Johannes, tunc  
"Prior Eliensis, et ejusdem loci  
"Capitulum, concessionem, ordinationem, et confirmationem prædictas, per scriptum suum sigillo  
"Capituli sui signatum approbaverunt et perpetuo confirmarunt."  
The seisin of successive chaplains through the hands of successive parsons was alleged, and that of Nicholas himself until four years before the purchase of the writ, when Luke withdrew the annuity and refused to render it. In the end "Lucas venit et nihil dicit quare prædictus Nicholaus prædictum annuum redditum versus ipsum prætextu scriptorum prædictorum recuperare non debeat." Judgment was given for the plaintiff to recover the annuity, arrears, and damages, assessed by the Justices at 40s.



## Nos. 31-34.

A.D. 1341. (31.) § Note that, where by an obligation one was  
 Note. bound in 40 marks, the plaintiff was barred by an  
 acquittance which purported that he received 10 marks  
 in full satisfaction of 40 marks.

Note. (32.) § Note that, where the parties had pleaded to  
 the country, a *Habeas corpora* issued after the *Venire  
 facias*; and, because a juror was wanting in the writ  
 when it was returned, a *Habeas corpora* issued anew.

Entry sur  
 disseisin. (33.) § Note that on a writ of entry *sur disseisin* the  
 tenant, by *Gayneford*, prayed aid, because one A. was  
 seised and leased to B. for his life, remainder to C. and  
 his heirs for ever, which C. granted the reversion, after  
 the death of B., to D. and E. his wife for the term of  
 their lives, and then afterwards C. granted the reversion,  
 after the death of B. and D. and E. his wife, to F. to hold  
 to him and his heirs for ever, on which grant B. and D.  
 and E. his wife attorned to F., and for that cause B.  
 prayed aid of D. and E. his wife and F., in whom the  
 right reposed.—*Stouford*. Those who have an estate by  
 him in remainder are no more admissible than he himself  
 was; besides, they have divers estates by several titles  
 of reversion, and the husband and wife will perchance  
 never have anything.—*Thorpe*. A writ of Waste has  
 been maintained for one who had such a reversion by  
 one in remainder.

Voucher. (34.) § One was vouched as being under age.—  
 The demandant said that the vouchee was of full  
 age.—A *Venire facias* issued, and then an *Alias  
 Distringas*, and afterwards a *Pluries Distringas* to  
 cause the vouchee to come to be viewed. And after-  
 wards a *Sequatur suo periculo* was entered; and on the  
 day no writ was returned; wherefore *Pole* rehearsed  
 the process, and prayed seisin.—The Tenant's Attorney

Nos. 31-34.

(31.)<sup>1</sup> § *Nota* qe, ou par obligacion un fust oblige A.D. 1341. en xl. marcz, le pleintif fust barre par une acquittance *Nota*. qe voleit qil resceut. x. marcz "*in perpacationem xl. marcarum.*"

(32.)<sup>1</sup> § *Nota*, ou parties avoint plede a pais, *Habeas* *Nota*. *corpora* issi apres *Venire facias*; et, pur ceo qun jurour *[Fits. Amend-ment, 57.]* y faillist en le bref quant il fust retourne, *Habeas* *corpora* issist de rechief.

(33.)<sup>1</sup> § *Nota* qen un bref dentre sur disseisine le tenant, par *Gayn.*, pria eide, pur ceo qun A. fust seisi et lessa a B. a sa vie, le remeyndre a C. et ses heirs a touz jours, le quel C. granta la reversion, apres la mort B., a D. et E. sa femme a terme de lour vies, et pus apres C. granta la reversion, apres la mort B. et D. et E. sa femme, a F. a lui et ses heirs a touz jours, par quel grant B. et D. et E. sa femme sattournerent a F., et par cele cause B. prie eide de D. et E. sa femme et F., en quex le droit repose.—*Stouf.* Ses qont estat par celui en remeyndre ne sont pas resceivable plus avant qil ne fust mesme; ovesqe ceo, il ount divers estates par severals titles de reversion, et le baron et sa femme jammes par cas naveront rien.—*Thorpe.* Bref de Wast ad este meintenu pur celui qavoit tiel reversion par celui en le remeyndre. Entre sur disseisine.

(34.)<sup>2</sup> § Un fust vouche come deinz age.—Le *Vowchen* demandant dit qe le vouche fust de pleine age.—*Venire facias* issit, et puis un autre destresse, et puis *Sicut pluries* de faire le vouche venir destre vewe. Et pus *Sequatur suo periculo* fust entre; a quel jour nul bref fust retourne; par quei *Pole* rehercea le proces, et pria seisine.—Lattourne le tenant dit qe le

<sup>1</sup> From T. alone.

<sup>2</sup> From T. alone, as far as the

point at which the larger type ends.

## No. 35.

A.D. 1341. said that the vouchee had come ready, and (said he) you can see by inspection that the vouchee is of full age, wherefore we pray the summons against him.—*Pole*. He has not a day; besides, he proffered himself at the last day, as he now does, and because he had not a day he was not admitted.—*HILLARY*. Land was not then to be lost as it is now; wherefore we award the summons against him, because we see that he is of full age.

*Præcipe  
quod  
reddat.*

§ On a *Præcipe quod reddat* the heir was vouched as being under age.—The demandant said that he was of full age.—A *Venire facias* issued, then a *Distringas*, then an *Alias Distringas*, then a *Pluries Distringas*, then a *Sequatur suo periculo* returnable, and no writ was returned.—The vouchee came in person.—*Pole*. Since it was said to the tenant that he should sue at his peril, and the writ is not returned, and so the vouchee has come without process, we pray seisin of the land.—Nevertheless the vouchee was viewed by the Court, and adjudged to be of full age.—*Pole* desired that he should be put to warrant the tenant immediately.—Nevertheless a writ issued to summon him, and that as warrantor.

*Trespas.*

(35.) § L. brought a writ of Trespass against four persons, for that, whereas they ought to protect four perches of land against the tides of the water of Humber, by reason of their lands, which they held by such service, and they and the tenants of the lands had always been accustomed so to do, &c., the said water had broken down the walls through the non-protection of the said four perches with wattles and stakes, so that the water had inundated 100 acres of the plaintiff's meadow, whereby he had lost the profits for ten years before the writ was purchased, &c., to his damage.—*Pole*, for one of the defendants, denied tort and force, and said that the three named with him were his villeins, wherefore he ought not to be put to answer with them.—*Thorpe*, for the other three, defended fully and imparled.—And afterwards discontinuance was alleged, in that three who were named had a day by the Grand Distress, and the fourth, who

## No. 35.

vouche est venu prest, et vous poez vere par A.D. 1341. inspeccion qil est de pleine age, par quei nous prioms la somons vers lui.—*Pole*. Il nad pas jour; ovesqe ceo, il se profri au darein jour, come ore fait, et pur ceo qil navoit pas jour il ne fust pas resceu. HILLARY. Adonques ne fust pas terre a perdre come or est; par quei nous agardoms la somons vers lui, pur ceo qe nous lui veoms de pleine age.

§ En<sup>1</sup> un *Præcipe quod reddat* leir deinz age fuit vouche.—Le demandant dit qil fuit de pleyn age.—*Venire facias* issuit, pas destresse, pus *Sicut alias*, pus *Sicut pluries*, pus *Sequatur suo periculo returnabile*,<sup>2</sup> et nul bref fuit retourne.—Le vouche vynt en propre persone.—*Pole*. Del heure qe dit fuit al tenant qil suyt a son peril, et le bref nest pas returne, issint vynt il sanz proces, nous prioms seisine de terre.—*Tamen* il fuit ven de Court, et ajuge de pleyn age.—*Pole* voleit qil ust este mys de garrantir mayntenant le tenant.—*Tamen* le bref issit de luy somondre et cum a garrant.

Præcipe  
quod  
reddat.  
[Fitz.  
Judgement,  
131.]

(35.)<sup>3</sup> § L. porta bref de Trespas vers iiij., de ceo qe la ou il duissent defendre iiij. perches de terre contre les fletes de lewe de Humber, par resone de lour terres, qil tenent par tiel service, et eux et les terres tenantz de toute le soleint faire, &c., la ad la dite ewe debruse les walles par le noun defens de les dites iiij. perches de cleies et peux, issi qe lewe ad surunde c. acres de pree le pleintif, paront il ad perdu le profist par x. aunz avant le bref purchace, &c., a ses damages.—*Pole*, pur un defendant, defent tort et force, et dit qe les iiij. qe furent nomes ovesqe lui sount ses vileyns, par quei ovesqe eux ne serreit il pas mys de respondre.—*Thorpe*, pur les autres iiij., defendist pleinement et enparla.—Et puis discontinuance fust alegge, de ceo qe iiij. qe sont nomes ount jour par la graund destresse, et le quarte, qe aparust al

Trans-  
gressio.

<sup>1</sup> This report of the case is from L. alone.

<sup>2</sup> L., *returnabilis*.

<sup>3</sup> From T. alone, as far as the point at which the largest type ends.

## No. 36.

A.D. 1341. appeared at the last day, ought to have had *Idem dies*, and the roll did not make mention of him, and so all were without day.—BASSET. It is true.

Trespass. § One A. brought a writ against four persons, which writ purported that, whereas the four held certain lands in T., by reason of holding which lands they ought to keep and have in repair four perches of a wall at the head of the water of the Humber, in the same vill, for the preservation of the adjoining lands, and they and all the tenants of the lands aforesaid had been accustomed to keep and repair this same wall from time whereof memory runneth not, for default of keeping the wall had fallen to decay, and the water had inundated one hundred acres of the demandant's land, whereby he had lost the profit during so much time, whereby, &c., and to his damage.—*Pole* defended fully on behalf of one, and said that the other defendants were his villeins, wherefore he ought not now to be put to answer with them.—The defaulters, by other serjeants, demanded oyer of the writ.—Afterwards it was found on the roll that on a previous day one appeared, the others made default, and process was made against those who made default, but *Idem dies* with respect to him who appeared was omitted from the roll.—Therefore the whole was discontinued, &c.

Avowry. (36.) § William Barde, the elder, avowed for the reason that one William Wyerne held of him certain land by homage, and fealty, and escuage, and 2½*d.* for the fine of the Wapentake of Pickering, of which services he was seised by the hand of Robert father of William Wyerne, and of the fine of the Wapentake by the hand of William; which William Wyerne leased a bovate of the same land to one J., who now complains, for the term of his life, rendering to William and his heirs 12*s.* by the year. This William Wyerne died, wherefore, by reason of the nonage of Robert son and heir of William, the avowant seized the wardship of the body and of the residue of the lands; and for the rent in arrear for the first year of fifteen years before the day of the taking he avowed as in parcel of the land so

## No. 36.

darein jour, duist aver ew *Idem dies*, et rolle ne A.D. 1341. fait pas mencion de lui, issi tout sanz jour.—BASS. Cest verite.

§ Un<sup>1</sup> A. porta bref vers iiij., quel bref voloit qe, com les iiij. Trespas. tenent certains terres en T., par resoun dez quex terres ils deveint garder et apparailer iiij. perches dun value sour le teste del ewe de Humbre, en mesme la vile, en salvacion des terres joyngantz, et eux [et] touz les terres tenantz avant-dits mesme celuy wale de temps dount memore ne court garder et reparailler solient, la par defaute de garde le wale est escheu et lewe ad sourinunde cent acres de pree de demandant, par quei il ad perdu le profist de tant de temps, par quei, &c., et a sez damages.—*Pole* defendi pleynement pur un, et dit qe les autres defendants furent sez vileins, par quei il ore [ne] deuyt estre mys de responndre ov eux.—Lez defautors par autres seriantz et demanderent oy de bref.—Pus fuit trove en roule, a aultre jour devant, qe un apparust, les aultres firent defaute, et proces fuit fait vers eux qe firent defaute, mes *Idem dies* en dreit de celuy qe aparust fuit entrelesse en roul.—*Ideo* tot discontinue, &c.

(36.)<sup>2</sup> § William Barde leisne avowa par la resone Avowri. qun William Wyerne<sup>3</sup> tient de lui certeine terre par homage, et feaute, et escuage, et ijd. ob. a la fyne a Wapentak de Pykeryng, des quex services il fust seisi par la mayn Robert pere William Wyerne,<sup>3</sup> et de la fyne de Wapentak par la mayn W.; le quel W. Wyerne<sup>3</sup> lessa une bovee<sup>4</sup> de mesme la terre a un J., qore se pleint, a terme de sa vie, rendant a lui et ses heirs xija. par an; le quel W. Wyerne<sup>3</sup> morust, par quei, par le noun age Robert fitz'et heir W., il seisi la garde du corps et de remenant de terres; et pur la rente arere del primer an de xv.<sup>5</sup> aunz avant jour de la prise il avowa come en parcele de la

<sup>1</sup> This report of the case is from L. alone.

<sup>2</sup> From T. alone, as far as the point at which the larger type ends, but corrected by the record *Placita de Banco*, Easter, 15 Edw. III., R<sup>o</sup>. 208. It there appears that

the action was brought by John Randesone against William Barde the elder.

<sup>3</sup> T., Wyheryn.

<sup>4</sup> T., carue.

<sup>5</sup> T., xiiij.

## No. 37.

A.D. 1841. holden of the heir and within his fee.—*Thorpe*. We do not admit, that the land is holden of him; but you see clearly that, even if it were holden of him, still the tenancy of the tenant for term of life is socage,<sup>1</sup> and it belongs properly to the next friend of the infant to render an account, and not to the lord to have wardship of the ward; judgment, &c.—*Pole*. That is to the action; and you by that plea do not deny that it is within our fee.—*Thorpe* imparled, and afterwards said *Hors de son fee*; ready, &c.—And the other side said the contrary.—*Quære* as to that matter.

Replevin. § John Randesone brought his Replevin against W. Barde, who avowed for that one W. Wyerne heretofore held of him two bovates of land, as by knight-service, and alleged seisin, &c. This W. Wyerne leased one bovat to J., the plaintiff, for J.'s life, to hold of W. Wyerne and of his heirs by the services of 12s. by the year. W. Wyerne died in homage to W. Barde, wherefore W. Barde seized the wardship of B. son and heir of W. Wyerne, for the rent in arrear since the death of W. Wyerne, and so he avows as guardian, &c.—*Gaynesford*. You prove, yourself, that the services for which you avow are socage,<sup>1</sup> the wardship of which belongs to the next friend; judgment, &c.—But he did not dare to abide judgment on that point, and prayed leave to imparl.

Wardship. (37.) § The Earl of Lancaster sued a writ of Wardship against Robert de Idle<sup>2</sup>; and at the Proclamation Robert came and pleaded to the inquest; and by reason of a Protection the parole demurred; whereupon, after a re-summons was sued, Robert was essoined as being in the King's service; and now he did not bring his warrant; wherefore the Earl recovered, as his damages for the day, 20s., and further prayed judgment on the principal matter for the default after proclamation.—*HILLARY*. By his appearance afterwards the Proclamation lost its force; but sue you the Distress to hear the jury if you will.—And he did so.—And

<sup>1</sup> There is no mention of socage in the record.

<sup>2</sup> The name should probably be Robert de Lisle.

## No. 37.

terre issi tenu del heir et deinz son fee.—*Thorpe*. A.D. 1341.  
 Nous ne conisoms pas la terre estre tenu de lui;  
 mes vous veez bien, tout fust ceo tenu de lui, uncore  
 la tenance le tenant a terme de vie est sokage, qapent  
 proprement a proschein amy lenfant de rendre acompt,  
 et noun pas al seignur daver gard de garde; juge-  
 ment, &c.—*Pole*. Cest al accion; et vous par ceo  
 plee ne deditez pas cest deinz nostre fee.—*Thorpe*.  
 enparla, et puis dit Hors de son fee; prest, &c.—*Et*  
*alii e contra*.—*Quære de illa materia*.

§ John<sup>1</sup> Bandesone porta son *Replegiari* vers W. Barde, qe Replegiari.  
 avowa pur ceo qun W.<sup>2</sup> Wyerne<sup>3</sup> tient jadis de luy ij. boves  
 de terrez si par service de Chivaler, et lia seisine, &c., le  
 quel lessa lune bouve a J.,<sup>4</sup> qe se pleynt, a sa vie, a tener de luy  
 et dez sez heirs par les services de xijs. par an, le quel W.<sup>2</sup>  
 morust en lomage W., par quei il seisi le garde de R.<sup>5</sup> fitz  
 et heir W.,<sup>2</sup> pur la rente arere pus la mort W.,<sup>2</sup> si avowe il  
 com gardien, &c.—*Gayn*. Vous mesmes provez qe lez services  
 pur quex vous avovez sont sokage, dount la garde appent a  
 prochain amy; jugement, &c.—Mes il nosa pas demorrer sour  
 ceo poynt, et pria conge demparler.

(37.)<sup>6</sup> § Le Count de Lancastre suyst bref de garde Garde.  
 vers Robert de Idle; et a la proclamacion Robert vient  
 et pleda al enquest; et par proteccion la parole demora;  
 par quei, apres resomons suy, Robert fust essone des  
 services le Roi; et ore ne port pas son garrant; par  
 quei le Count recoverist ses damages pur la journe  
 xxs, et outre pria jugement sur le principal pur la  
 defaute apres proclamacion.—*HILL*. Par sa aparance  
 apres la proclamacion perdi sa force; mes suez la  
 destresse doier la jure si vous voillez.—*Et ita fecit*.—

<sup>1</sup> This report of the case is from  
 L. alone. The plaintiff is there  
 described as A. de B. See Note 2,  
 p. 89.

<sup>2</sup> L., J.

<sup>3</sup> L., Withorn.

<sup>4</sup> L., A.

<sup>5</sup> L., L.

<sup>6</sup> From T. alone, as far as the  
 point at which the larger type ends.



## No. 38.

A.D. 1341. *Thorpe* said that then he should have a challenge to the inquest.—*Quære* the Statute<sup>1</sup> “that a single essoin or a single default.”

Wardship. § Henry, Earl of Lancaster, brought his writ of Wardship against Robert Lille, who came by the Proclamation, and pleaded to issue that one A. had recovered the wardship, pending this writ, and was seised.—The exception was counter-pleaded, on the ground of a *Prece partium* taken since the recovery.—Nevertheless, they were at issue as to whether A. was now seised by virtue of the recovery.—Afterwards the parol demurred by reason of a Protection.—Afterwards, at the resummons, Robert was essoined by a common essoin, and afterwards as being on the King's service; and on the day he made default. Therefore the plaintiff recovered his damages of 20s., and prayed judgment on the Proclamation.—HILLARY awarded a Distress to hear the jury, &c.

Mesne. (38.) § On a writ of Mesne a title to acquittal of services was shown by a tenant in frankalmoign, in that the ancestor of the defendant confirmed the estate of the plaintiff's predecessor, to hold of him and his heirs in frankalmoign the lands, &c., which before were of his fee, and that afterwards the defendant himself ratified, &c. And the plaintiff did not show that the defendant or any of his ancestors enfeoffed. And no exception was taken on that point.—*Thorpe*. He has produced our own deed, and it recites, according to his statement, the deed of our ancestor; and by the deed, which he produces as a title to acquittal, it is set forth that we have released all manner of seignory, and consequently he has become tenant of the lord paramount, and we are strangers to the seignory; and this writ lies only between lord and tenant; judgment of the writ.—*R. Thorpe*. Then we are agreed that before you made this deed we held of you in frankalmoign, and by this deed only secular services are released: and, even though you had released generally, that

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<sup>1</sup> 52 Hen. 3. (Stat. Marl'b.) c. 13.

## No. 38.

Et Thorpe dit qadonques il avera chalange al enqueste. A.D. 1341.  
 —*Quære Statutum quod unicum essonium vel unicam defaultam.*

§ Henre,<sup>1</sup> Counte de Lancastre, porta son bref de garde vers Garde. Robert Lille, qil vynt par le proclamacion, et pleda a issue [Fitz. Jugement, 130.] qun A. avoit recoveru la garde, pendant cele bref, et seisi est.—Lexcepcion fuit contreplede par *prece partium* pris pus la recoverir.—*Tamen* furent a issue<sup>2</sup> si A. soit ore seisi par le recoverir.—Pus la paroule demura [par] proteccion.—Pus, a le resomons, il fuit essone de comune essou, pus de service le Roi; a quil jour il fit defaute. Par quei le pleintif recoveri ses damages de *xxs.* et pria jugement sour le proclamacion.—HILL. agarda destresse doier la jure, &c.

(38.)<sup>3</sup> § Title daquitanz en bref de mene fust moustre De Medio. par tenant en fraunk almoigne, pur ceo qe launcestre le defendant conferma lestat son predecessour, a tenir de lui et ses heirs les terres, &c., qe furent devant de son fee en fraunk almoigne, et pus le defendant mesme ratifia, &c. Et ne mostra pas qe lui ou ascun de ses auncestres fefferent. Et ceo nest pas chalenge. —*Thorpe.* Il ad mys avant nostre fet demene, qe recite, a ceo qil dit, le fet nostre auncestre; et par le fet qil mette avant pur title dacquittance si est compris qe nous avoms relese toute maneres de seignurie, et *per consequens* il est divenuz tenant le seigneur paramont, et nous estrange de la seignurie, et ceo bref ne gist fors entre seigneur et tenant; jugement du bref.—*R. Thorpe.* Donques sumes a un qe avant qe vous feistes ceo fet nous tenoms de vous en fraunk almoigne, et par ceo fet nest relese fors services seculers; et, coment qe vous ussez relese generalment, ceo ne nous poet pas faire departier de

<sup>1</sup> This report of the case is from L. alone.

<sup>2</sup> L. assue, instead of a issue.

<sup>3</sup> From T. alone until otherwise stated.

## No. 38.

A.D. 1341. could not make us depart from you; judgment. — *Derworthy*. If I demand a manor by Formedon, and the tenant allege nontenure, I shall have the replication that he is tenant in demesne and in alms, &c., so that it may be understood that land holden in alms may be holden of another than the feoffor. Besides, if I hold a manor to which frankalmoign is regardant, and forfeit it, the alms will escheat to the lord.—*HILLARY*. I deny it.—*Thorpe*. On the contrary, the land will be pleaded in the lord's Court.—*HILLARY*. In the King's Court.—And afterwards it was adjudged that the plaintiff should recover the acquittal, and have the inquest for damages.

Mesne. § The Abbot of Welbeck brought a writ of Mesne against Roger de Senmarch,<sup>1</sup> and counted that he held of Roger in frankalmoign, and in order to bind Roger to the acquittal of services, he showed Roger's deed, in which it was recited that, whereas Thomas, Roger's father, had given the tenements to the Abbot's predecessor to hold in frankalmoign, the said Roger ratified, confirmed, and quit-claimed the tenements aforesaid to this Abbot and to his successors for ever, to hold as freely as frankalmoign can be held, with a clause of acquittal.—*Blaik*. The deed proves that we are supposed to have confirmed and quit-claimed all our right, in which case you have become the tenant of the chief lord; judgment whether by such a deed you can bind us to acquit.—*R. Thorpe*. In the same deed the seignory of the frankalmoign is saved. Besides, that is a service which descends in the blood of the first donor, and it cannot be released.—*Thorpe*. It can be, for, if the services of

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<sup>1</sup> The name should probably be written Neumarch. In Fitzherbert's *Abridgment* the initial appears as N.

## No. 38.

vous; jugement. — *Derworth*. Si jeo demande par A.D. 1341. forme de doun un manoir, et le tenant allege noun-teneue, jeo avera replicacion qe tenant en demene et almoigne, &c., issint qil poet estre entendu qe almoigne serra tenue dautre qe del feffour. Ovesqe ceo, si jeo teigne un manoir a qi fraunk almoigne est regardant, et il forface, lalmoigne escherra al seignur. — *HILL*. *Nego.* — *Thorpe*. *Contra*, la terre serra plede en la Court le seignur. — *HILL*. En la Court le Roi. — Et puis agarde fust qe le pleintif recovere lacquittance, et lenquest pur damages.

§ Labbe<sup>1</sup> de Welbek porta bref de Meen vers Roger de Senmarch,<sup>2</sup> et counta qils tient de luy en frank almoigne, et, pur lier luy a laquittance, il moustra fait de Roger en quel fuit recite qe, com Thomas soun pere ust done les tenementz al predecessour Labbe a tener en frank almoigne, le dit Roger ratifia, conferma, et quite cleyma lez tenementz avantdits a cesti Abbe et a sez successours a touz jours, a tener auxi franchement com frank almoigne put estre tenu, ove clause daquittance. — *Blaik*. Le fait prove qe nous dussoms aver conferme et quite clame tot nostre droit, en quel cas vous estez avenuz le tenant le chief seignur; jugement si par tiel fait nous poussez<sup>3</sup> lier. — *R. Thorpe*. En mesme le fait est save la seignure de frank almoigne. Estre ceo, cest un service qe descend en le saunk le primer donour, qe ne put estre relesse. — *Thorpe*. Si puit, qar si lez services de frank almoigne seient

Meen.  
[Fitz.  
Confirmacion, s.]

<sup>1</sup> This report of the case is from L. alone.

<sup>2</sup> Sic in MS.

<sup>3</sup> L., poussoms.

## Nos. 39-41.

**A.D. 1341.** frankalmoign be regardant to a manor, he who has the manor has the seignory for the time during which he is seised.—Nevertheless, because the seignory was saved by the deed, it was adjudged that the Abbot should recover, and that he should have a writ to the Sheriff to enquire as to the damages, &c.

**Mesne.** (39.) § Note that it is accepted for answer on a writ of Mesne that the lord paramount has neither fee nor seignory, because the mesne is not bound to acquit except with regard to him who has seignory, &c.

**Formedon.** (40.) § Hugh son of Hugh Le Spenser brought his writ of Formedon against W. Clynton, Earl of Huntingdon, and Juliana his wife, and at the end of the writ the words were "Summon the aforesaid W. and J." without describing him as Earl—Exception was taken on this point.—Therefore *Quære*.

**Præcipe quod reddat.** § Hugh the son of H., the son of H. Despenser, brought a writ against the Earl of Huntingdon and his wife, and in the summons the Earl was not described as Earl, but by his baptismal name, and exception was taken on this point, &c.

**Right of Advowson.** (41.) § The Prior of Drax brought a writ of Right of Advowson against the Prior of the Trinity of York, and on a former occasion the mise was joined, and they had a day at five weeks after Easter; wherefore the Prior of Drax, on the first day, made his proffer, and prayed that the Prior of the Trinity might be called; and thereupon *Blaike* came and said that the attorneys of the Prior of the Trinity were essoined; and he said that the Prior of the Trinity was present in his own person, and prayed that the essoin might be quashed.—And so it was.—*Pole*. We bring our writ against the Prior of the Trinity, who heretofore joined the mise, and he who now proffers himself is not the same person; wherefore we pray final judgment on his default.—**BASSET**. To what purpose do you speak? For if he against whom your

## Nos. 39-41.

regardants a un manere, celui qe ad le manere ad la A.D. 1311. seignurie pur le temps qil est seisi.—*Tamen*, pur ceo qe par le fait la seignurie est salve, agarde fuit qil recoverast, et qil ust bref a Vicounte denqere des damages, &c.

(39.)<sup>1</sup> § *Nota* qe cest accepte pur respons en bref De Medio. de mene qe le seigneur paramount nad fee ne seignurie, pur ceo qe le mene nest pas tenu dacquiter fors vers celui qad seignurie, &c.

(40.)<sup>2</sup> § Hugh fitz Hugh Lespenser porta son bref de Forme de formedoun vers W. Clyntone,<sup>3</sup> Counte de Huntindone, et Julian sa feme, et en le fyn de bref fuit *summoneas prædictos W. et J. sanz nomer luy Counte*.—Ceo poynt fuit chalenge.—*Ideo quære*.

§ Hugh<sup>4</sup> le fitz H., le fitz H. Despenser, porta bref vers le Count de Huntindone et sa femme, et en la somons il ne fust pas nome Count, mes par noun de baptesme, et ceo fust chalenge, &c.

(41.)<sup>5</sup> § Le Priour de Drax porta bref de droit davoue-  
soun vers le Priour de la Trinite Deverwyk, et autrefoitz  
la myse joynt, et ount jour a les v. symaunes de Pasche;  
par quei le Priour, le primer jour, fist son profre, et pria  
qe le Priour de la Trinite fust demande; et sur ceo *Blayk*  
vient et dit qe les attournes le Priour de la Trinite furent  
essone; et dit qe le Priour de la Trinite est en propre  
persone, et prie qe lessone soit quasse. *Et ita fuit.*—  
*Pole*. Nous portoms nostre bref vers le Priour de la  
Trinite, qautrefoitz joynt la myse, et cestui nest pas  
mesme la persone qore se profre; par quei nous prioms  
jugement fynal sur sa defaute.—BASS. A quel effect  
parles vous? Qar sil soit mort vers qi vostre bref fust

<sup>1</sup> From T. alone.

<sup>2</sup> From L. alone, as far as the point at which the larger type ends.

<sup>3</sup> L., Slyntone.

<sup>4</sup> This report of the case is from T. alone.

<sup>5</sup> From T. alone, as far as the point at which the larger type ends.

## No. 42.

A.D. 1341. writ was brought be dead, it is abated; and if he has been deposed and another has been since elected, your writ is good, for he is not named by his baptismal name.—*Gayneford*. I have seen in a similar case that the successor was not admitted to perform the law waged by his predecessor.—*HILLARY*. We record your proffer, and his presence on the other hand; and keep your day at the fourth day, since you do not deny that he is Prior; and even if you would deny it, how should it be tried?

Right. § The Prior of Drax brought a writ of Right against the Prior of the Trinity of York, who joined the mise in B. And they had a day at five weeks after Easter.—On the first day the parties proffered themselves.—*Pole*. The Prior against whom we brought our writ was named J., and this one who proffers himself is another person; wherefore, &c.—*Blaik*. You do not deny that this one is Prior now, and you will not sue against him; judgment, &c.—And the truth was that the other Prior was deposed, pending the writ.—But *Pole* did not dare to abide judgment on his exception, and therefore their proffer was recorded.—*Quere* out of this, &c.<sup>1</sup>

Replevin. (42.) § One J. brought his Replevin against Hugh de Audele, Earl of Gloucester, and one Thomas.—*Gayneford*. Thomas made cognisance as bailiff of Hugh and Margaret his wife, for the reason that one J., the plaintiff's father, heretofore held of Gilbert de Clare, Earl of Gloucester, the manor of Tandridge, by knight-service, and by suit, &c., and by the services of 2s. by the year, called *Park silver*, to enclose the Earl's park, and by an usage such that every purchaser shall pay a fine at the will of the lord, as services regardant to the Earl's manor of Blechingley, and

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<sup>1</sup> See T., 15 E. 3, No. 1.

## No. 42.

porte, il est abatu ; et sil depose et autre puis soit esleu, A.D. 1341. vostre bref est bon, qar il nest mye nome par noun de baptesme.—*Gayn.* Jay vew en le cas qe le successeur ne fust mye resceu de faire la ley gage par son predecessour.—*HILL.* Nous recordoms vostre profre, et sa presense dautre part ; et agardez voz jours al quarte jour, del houre qe vous ne dedites pas qil est Priour ; et tout le voudres dedire, coment serreit ceo trie ?

§ Le<sup>1</sup> Priour de Drax porta bref de dreit vers le Priour de la Trinite de Everwyk, qe joynt la myse en B. Et avoient jour a v. symaignes de Pasche.—Al primer jour lez partiez se profereint.—*Pole.* Celuy Prior vers qi nous portames nostre bref avoit a noun J., et cesti qe se profre est altre persone ; par quei, &c.—*Blak.* Vous ne deditez pas qe cesty nest Priore a ore, et vous ne volez pas suyre devers luy ; jugement, &c.—Et fuit la verite qe lautre fuit depose, pendant le bref.—Mes *Pole* nosa pas demurer sour soun challenge, par quei lour profre fuit recorde.—*Quere ex hoc, &c.*

(42.)<sup>2</sup> § Un J.<sup>3</sup> porta son *Replegiari* vers Hugh Daudele, Counte de Gloucestre, et un Thomas.<sup>4</sup>—*Gayn.* Thomas<sup>4</sup> conust com ballif Hugh et Margerie sa feme, par le resoun qe unne J.,<sup>5</sup> pere le pleyntif, tyent jadis de Gilbert de Clare, Counte de Gloucestre, le manere de Tanrugge, par service de chivaler, et par suyte, &c., et par les services de ijs. par an, qest apelle *park silver*, pur enclorre soun park, et par tiel usage qe purchaceour paiera fyn a volunte de seignur, com des services regardants a son manere de Blech-

<sup>1</sup> This report of the case is from L. alone.

<sup>2</sup> From L. alone, until otherwise stated, but corrected by the record *Placita de Banco*, Easter, 15 Edw. III., R<sup>o</sup>. 112. It there appears that the action was brought by John de Warbelton against Hugh de Audele, Earl of Gloucester, and

"Thomas Jones servant Fromount." The Earl pleaded that he did not take, and issue was joined thereon. Thomas made cognisance as bailiff.

<sup>3</sup> L., A.

<sup>4</sup> L., James.

<sup>5</sup> L., B. ; the father's name was John according to the record.



## No. 42.

A.D. 1341. he alleged seisin, &c. From Gilbert the descent was to this Margaret the wife of Hugh, and Eleanor, and Elizabeth, between whom partition was made in Chancery, so that the aforesaid rent and suit were, by extent, allotted among other things as the purparty of this Margaret, and the fees of the manor of B. were assigned to Eleanor, and therefore he acknowledges the taking of two oxen for the rent, and he acknowledges the taking of one ox for the suit, as in parcel of the manor of Tandridge charged to M. and H., by virtue of the partition aforesaid, &c.—*R. Thorpe*. H., in whose name you make cognisance, has denied the taking, and therefore you shall not be admitted to make cognisance in his name.—And this exception was not allowed.—*R. Thorpe*. You have made cognisance for suit, and you admit, in avowing, that the tenements are out of your fee; judgment of this cognisance.—*Stouford*. We say, in avowing, that the partition was made in Chancery, in which place the mode is to make partition of that which lies in extent severally and by itself, and other partition of fees and advowsons by themselves, and you, agreeing to this, attorned; judgment, &c.—*Pole*. We have not

No. 42.

ynnglehe,<sup>1</sup> et lia seisine, &c. De Gilbert descendi a A.D. 1341. ceste Margerie qest la femme Hugh, et Elienour, et Elizabeth, entre quex la purpartie se fit en la Chancellerie, issint qe lavant dit rente et suyte par estente entre autres chose furent allotes a la purpartie ceste M., et ses feez del manere de B. furent assignez a Elienore,<sup>2</sup> et pur tant de la rente si conust il la prise de ij. boef, et pur la suyte si conust il la prise dune boef, com en parcel du manere de T. a M. et H. charge par force de la purpartie avantdite, &c.—*R. Thorpe.* H., en qi noun vous conussez, ad dedit la prise, par quei a conustre en soun noun navendrez pas.—*Et non allocatur.*—*R. Thorpe.* Vous avez conu pur suyte, et vous conussez, en avowant, qe lez tementz sount hors de vostre fee; jugement de ceste conusance.<sup>3</sup>—*Stouff.* Nous dioms, en avowaunt, qe la purpartie se fist en la Chauncellerie, en quel place la manere est de faire purpartie de ceo qe chiet en estente severalment et per luy, et autre purpartie des fees [et] avowesouns a per luy, et vous agreant attornastes; jugement, &c.—*Pole.* Nous avoms pas a

[Fitz.  
Avowre,  
107.]

<sup>1</sup> The words of the record relating to this are "et, quandocumque aliquis perquisierit aliquid de predicto manerio de Tanrigge, dominus predicti manerii de Blechyngleghe, qui pro tempore fuerit, habebit finem de huiusmodi perquisitore ad voluntatem ejusdem domini."

<sup>2</sup> According to the record the partition was alleged to have been as follows:—"Ita quod predictum manerium de Blechyngleghe secundum extantam inde factam, &c., assignatum fuit parti predictæ Margaretæ in allocationem aliorum tenementorum,

"&c., et feoda militum quæ fuerunt spectantia ad predictum manerium de Blechyngleghe assignata fuerunt parti predictæ Alianoræ in allocationem aliorum feodorum ad alia maneria spectantium, quæ maneria assignata fuerunt in partem ipsius Alianoræ, et quæ feoda assignata fuerunt parti predictæ Margaretæ, et quæ feoda assignata fuerunt parti predictæ Elizabethæ."

<sup>3</sup> This plea appears in the following form on the roll:—"Et Johannes dicit quod predictus Thomas superius expresse cog-

## No. 42.

A.D. 1341. to acknowledge partition made between you.—*Thorpe*.  
 You have, because seizure into the King's hand, and attendance done to the King, and also livery out of the King's hand, and the mode of the livery, lie within the cognisance of the country, and partition made in Chancery is equivalent to judgment given between parceners on a writ *de partitione facienda*, and we ought not now to be in a worse condition for distraining in respect of that which is allotted to us than the other sister shall be, &c.

Replevin. § Replevin brought against Hugh de Audele, Earl of Gloucester, and another. Hugh traversed the taking. The other made cognisance of the taking, as bailiff of Hugh, in right of M. his wife, for the reason that the plaintiff's ancestor held of G. Clare, Earl of Gloucester, as of his manor of B., by homage, fealty and escuage, and by suit to his court, and by certain services, and by the services that each time the tenant aliened the purchaser should make fine for his entry at the will of the lord; of which services, &c., G. was seised, &c.; and from G., because he died without heir of his body, the earldom descended to Margaret, Eleanor, and Elizabeth, as sisters. Partition between them was made in the Chancery, so that the suits, fees, &c., were extended, and the fees of the manor were allotted as the purparty of Eleanor, and the rent and

" novit quod prædictus Johannes  
 " pater ipsius Johannis de War-  
 " belton, cujus heres ipse est, fuit  
 " tenens prædictæ Alianoræ matris  
 " cujusdam Hugonis filii Hugonis  
 " le Despenser, cujus heres ipse  
 " Hugo est, et quod prædicta  
 " feoda in Bleccchyngleghe integre  
 " fuerunt assignata prædictæ Alia-  
 " noræ, et sic supponit prædictum  
 " manerium de Tanriggs esse

" de feodo ipsius Hugonis filii  
 " Hugonis et extra feodum præ-  
 " dictorum Comitiss et Margaretæ,  
 " et idem Thomas, ut ballivus præ-  
 " dictorum Comitiss et Margaretæ,  
 " fecit cognitionem pro prædictis  
 " redditu et secta, quæ sunt ser-  
 " vitia ejusdem feodi, unde petit  
 " judicium de cognitione, &c., et  
 " damna sibi adjudicari, &c."

## No. 42.

conustre purpartie fait entre vos.—*Thorpe*. Si avez, qar A.D. 1341.  
la seisine en la mayn le Roy, et lattendance fait al Roy,  
et auxi a lyverer hors de la mayn le Roy, et la manere  
de la lyverer, cheient en conisance du pais, et la pur-  
partie fait en la Chancellerie contrevaut jugement rendu  
entre parceners en bref *de partitione*<sup>1</sup> *facienda*, et nous  
ne deivoms ore estre de pire condicion a destreindre  
pur ce qest allote a nous qe lautre soer ne serra, &c.<sup>2</sup>

§ *Replegiari*<sup>3</sup> porte vers Hugh Daudele, Count de *Replegiari*.  
Gloucestre, et un autre. H. traversa la prise. Autre  
conust la prise, com baillif H., en le droit M. sa femme,  
par la resone qe launcestre le pleintif tient de G. Clare,  
Count de Gloucestre, come de son manoir de B., par  
homage, feaute, et escuage, et par suyte a sa court, et  
par certains services, et par les services qe chescun  
temps qe le tenant aliene qe celui qe purchacera fra  
fine pur son entre a la volunte le seignur; des quex  
services, &c., G. fust seisi, &c.; et de G., pur ceo qil  
morust saunz heir de son corps, descendi la comite a  
Margarete, Elianore, Elizabet, come a soers, entre  
quex en la Chauncellerie la purpartie se fist, issint qe  
suytes, foes, &c., furent estenduz, et les feez del manoir  
alotes a la purpartie Elianore, et la rente et la suyte

<sup>1</sup> L., de droit de participatione  
instead of *de partitione*.

<sup>2</sup> According to the record, there  
came, after the plea above quoted,  
the award of *Venire* as to the issue  
on the denial of taking, and a day

was given as to what had been  
pleaded to judgment. There were  
several adjournments, but no ver-  
dict or judgment appears.

<sup>3</sup> This report of the case is from  
T. alone.

## No. 43.

A.D. 1841. the suit as that of Margaret, the wife of Hugh, and on the partition the ancestor and the plaintiff himself attorned; and for the suit and the rent in arrear he made cognisance, as bailiff of Hugh, as in parcel, &c., whereof the suit and rent were given.—*Thorpe*. He made cognisance for one who has himself disavowed the taking, and who was party and might have avowed; judgment of the cognisance.—This was not allowed.—*Thorpe*. In his cognisance it is stated that every purchaser shall pay a fine for his entry, and that is not a service; judgment of the cognisance.—This was not allowed.—*Thorpe*. He made cognisance for suit and service, and he showed that the said land was out of his master's fee; judgment.—*Stouford*. We have made cognisance upon a partition between parceners; wherefore was there such a partition or not? And I say that by law if a seignory descend to two parceners, and the seignory be allotted to one, and the rent to the other, she shall avow even though the land be out of her fee; and you attorned as to the purparty, and so you can discharge yourself against the other parceners.—*Thorpe*. If I grant the suit of my tenant with the land to a stranger, reserving to myself the seignory, he shall never make avowry, because the land is out of his fee; for if the avowry were to be maintained, it would follow that the tenant would hold of divers lords severally, which can not be.—*Stouford*. Sue then that the partition be undone and revoked. And if you grant to another to do suit at his court, and you do it, whereas you are my tenant, and have come to his court, shall he not have the suit? (intimating the affirmative); so in this case by the partition and your attornment.—They were adjourned.

## AVOWRY.

(43.) § Avowry for that the avowant is seised of the Hundred of Taunton as in right of his wife, within which he has a decennary court to hold by

## No. 43.

a Margarete femme H., et par la purpartie launcestre A.D. 1341. et le pleintif mesme sattournerent; et pur la suyte et la rente arere il conust come baillif Hughe come en parcelle, &c., dount la suyte et la rente fust done. —*Thorpe*. Il conust pur celui qad desavowe mesme la prise, et qe fust partie et poet aver avowe; jugement de la conisance.—*Non allocatur*.—*Thorpe*. En sa conisance est compris qe chescun purchaseour fra fyne pur son entre, qe nest pas service; jugement de la conisance.—*Non allocatur*.—*Thorpe*. Il conust pur suyte et service, et moustra mesme la terre estre hors de le fee son mestre; jugement.—*Stouf*. Nous avoms conu sur une purpartie et entre parceners; par quei y ad il tiel purpartie ou noun? Et jeo die qe de ley si un seignurie descent a deux parceners, et la seignurie seit alote a lun, et la rente a lautre, ele avowera, tout soit la terre hors de son fee; et vous estes attourne pur la purpartie, et issint vous poez descharger vers les autres parceners.—*Thorpe*. Si jeo grante la suyte moun tenant ove la terre a un estrange, reservant a moi la seignurie, jammes ne fra il avowere, pur ceo qe la terre est hors de son fee; qar si lavowere soit meintenu il ensuerait qe le tenant tendreit de divers seignurs severalment, qe ne poet estre.—*Stouf*. Suez donques qe la purpartie soit defait et repele. Et, si vous grauntes a un autre de faire suyte a sa Court, et vous la faces, la ou vous estes moun tenant, et vous avez venu a sa Court, navera il mye la suyte? *quasi diceret sic*; auxi en ceo cas par la purpartie et vostre attournement, &c.—*Adjornantur*.

(43.)<sup>1</sup> § Avowere pur ceo qil est seisi del hundred Avowri. de Tantone come du dreit sa femme, deinz quel il ad Teinure a tener par garnisement des viij. jours

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<sup>1</sup> From T. alone.

Nos. 44, 45.

A.D. 1341. warning of eight days every year after the Feast of St. Michael, which court has equal force with frank-pledge, to which court the diceners ought to come and present things which are presentable, and because the plaintiff, who is resiant, &c., did not come, &c., he avows.—*Derworthy*. He has not grounded his avowry on seisin, whereas every avowry ought to be grounded on seisin; judgment.—*Thorpe*. It is not necessary, for every one ought to be affirmed to the peace; and of common right every dicener ought to present, &c.—*Derworthy*. You do not say that they are your diceners, and, if they be out of your tithing, then it would be necessary to affirm such coming by prescription.—*Thorpe*. We do not say that they are diceners other than ours; besides, we have alleged seisin by the hand of your feoffor, and that is sufficient.—*Blaik*. He has avowed out of his fee, and does not ground his avowry on prescription; judgment, &c.

**Avowry.** (44.) § Avowry for the reason that the avowant is seised, as in right of his wife, of the Hundred of Taunton, to which the plaintiff, by reason of a carucate of land, &c., which C. holds, &c., ought to do suit, and of which the defendant's ancestor was seised by the hand of B., as tenant of the same land, which B. enfeoffed the plaintiff and her husband, to hold to them and their heirs, by whose hands he was seised, and after the death of the husband by the hand of the wife; and for the suit in arrear he avowed as in parcel of the land charged with the suit.

**Replevin.** (45.) § Replevin for John de Tornerghe.—The Abbot of Furness avowed for the reason that Christiana de Lindesey held of him, &c., by homage, fealty, and escuage, and by suit to the court of Dalton, which

Nos. 44, 45.

chescun an apres le Seint Michel, quele Teinure pur- A.D. 1341,  
port la force de fraunk plegge, a quele Teinure les  
disiners deivent venir a pr-senter choses presentables,  
et pur ceo qe le pleintif, qest resceant, &c., ne vient pas,  
&c., si avowe il.—*Derworth*. Il ny ad mye lie savowere  
par seisine, ou chescun avowere covient estre lie par  
seisine; jugement.—*Thorpe*. Il ne bosoigne pas, qar  
chescun deit estre afferme a la pees; et de comune  
dreit chescun disiner deit presenter, &c.—*Derworth*.  
Vous ne dites pas qil sont voz disiners, et, sil soient  
hors de vostre diseyne, donques il covendreit affermer  
tiele venue par prescripcion.—*Thorpe*. Nous ne dioms  
pas qil sont autres diseners qe le noz; ovesqe ceo,  
nous avoms lie seisine par la mayne vostre feffour,  
et ceo suffist.—*Blaik*. Il ad avowe hors de son fee  
et ne lie pas savowere par prescripcion; jugement, &c.

(44.)<sup>1</sup> § Avowere par la resone qil est seisi, come Avowri.  
de dreit sa femme, del hundred de Tantone, a quel le  
pleintif, par resone dune carue de terre, &c., quele C.  
tient, &c., deit faire suyte, et dont launcestre le defen-  
dant<sup>2</sup> fust seisi par my la mayne B. come de tenant  
de mesme la terre, quel B. enfeffa le pleintif et son  
baroun a eux et a lour heirs, par qi meyns il fust  
seisi, et apres qi mort le baroun par la mayne la  
femme; et pur la suyte arere il avowa come en  
parcele de la terre charge a la suyte.

(45.)<sup>3</sup> § *Replegiari* pur J. T.—Labbe de Forneys *Replegiari*.  
avowa par la resone qe Christiene de Lyndeseye  
tient de lui, &c., par homage, feaute, et escuage, et  
par suyte a court de Daltone,<sup>4</sup> qest a tenir de

<sup>1</sup> From T. alone.<sup>2</sup> T., pleintif.<sup>3</sup> From T. alone, until otherwise  
stated, but corrected by the record  
*Placita de Banco*, Easter, 15 Edw.III., R<sup>o</sup>. 191, d. It there appears  
that the action was brought by  
John de Tornerge against the  
Abbot of Furness.<sup>4</sup> T., L.



## No. 45.

A.D. 1341. was to be holden every three weeks, and to come twice a year, after Easter and Michaelmas, and to every court when a thief was to be judged or a writ of Right was pending there, and to come in aid of the suitors when there was any difficulty as to a judgment there. And of these services he was seised by the hand of Christiana; and from Christiana the descent was to William as to son and heir, and from William to Ingram as to brother. And because the suit for five years, and the homage of Ingram, and the relief of William after the death of Christiana, and the relief of Ingram after the death of William, were in arrear, (and he particularised the quantity of the relief in respect of the two reliefs) he avowed.—And note that it is the opinion of the COURT that, after receipt of homage, one can not avow for relief.—*Quære.*—*Blak.* It is very true that Christiana held of the Abbot, but not by the services alleged, for she held by fealty, and 5s.; and John the present plaintiff is tenant of the vill of Ulverston, and held of that Christiana; and we tell you that, after the death of Christiana, the seignory descended to William Coucy, as is supposed by the avowry, and he gave a moiety of the vill of Ulverston, by the description of a moiety of the barony, &c., to W. the son of W. Coucy, to hold to him and to his heirs; whereupon John, the plaintiff, attorned to him; and we do not think that you can avow on any other than W.; and you have here W. the son of W. Coucy in his own person, and he tells you as above, and he joins with the tenant; judgment whether on any other than him, &c.; and he says that he has always been, and still is, ready to do the services.—*Gayneford.* As to the plaintiff, he

## No. 45.

iiij. semaynes en iiij. semaynes, et a venir ij. foitz A.D. 1341. par an, apres la Pasche et la Seint Michel, et a chescun court quant laroun y est a juger ou bref de dreit pendant, et quant ascun jugement defieultive y fust, pur venir en eyde des suyters; des quex services il fust seisi par la mayne Christiene; et de Christiene descendi a William come a fitz et heir, de W. a Ingram come a frere. Et pur ceo qe la suyte par v. aunz, et lomage I., et le relief W. apres la mort Christiene, et le relief Ingram apres la mort W., furent arere, et myst en certain la quantite del relief pur les deux reliefs, il avowa. — *Et nota* qe [Fitz. Relief, 5.] oppinion de COURT est qe, apres resecite de homage, homme ne poet avower pur relief. — *Quære.* — *Blayk.* Bien est verite qe Christiene tient del Abbe, mes noun pas par tieux services, qar ele tient par feaute, et vs.; et Johan qe se pleint si est tenant de la ville de Ulvestone, et tient de cele Christiene; et vous dioms qe, apres la mort Christiene, la seignurie descendy a W. Coucy, come suppose est par lavowere, le quele dona la moite de la ville de Ulvestone, par noun de la moite de la baronie, &c., a W. le fitz W. Coucy, a lui et a ses heirs; par quei Johan, qe se pleint, sattorna a lui; et nentendoms pas qe sur autre qe W. puisse avower; et vous avez cy W. fitz W. Coucy en propre persone, et vous dit *ut supra*, et se joynt al tenant; jugement qe si sur autre qe lui, &c.; et dit qil ad este tout temps, et uncore est, prest de faire les services.<sup>1</sup> — *Gayn.* Quant al pleintif, il est

<sup>1</sup> According to the roll the plaintiff pleaded that the tenements which the Abbot supposed Christians to have held were a moiety "villæ de Ulverestone, unde ipse Johannes tenet unum mesuagium et duas acras terræ de quodam Willelmo filio Willelmi de Coucy.

"Et dicit quod bene verum est quod prædicta Christiana tenuit de prædicto Abbate prædictam medietatem villæ prædictæ, scilicet per fidelitatem et servitium quinque solidorum per annum pro omni servitio. Et de ipsa Christiana descendit illa medietas cuidam Wil-

## No. 45.

A.D. 1341. is a stranger, who cannot plead except that it is out of our fee, or something tantamount thereto; and now he has admitted the fee, and he can not counterplead the quantity; judgment, and we pray the Return. And as to him who would join himself, he is a stranger also, and the cause of his joinder can not be tried between us as to the quantity; judgment whether he can make himself a party.—*Blaik*. That he is not a party to the avowry, when he is your tenant by Statute,<sup>1</sup> is your fault in that you did not avow on him, and he is privy to you and joins himself to his tenant, which is in lieu of acquittal of services; and otherwise it would be too great a mischief.—*Thorpe*. On the other hand, it is inconvenient if the cause of the joinder should be tried between us, for in that case a second might come, and a third, &c.—*PARNING*. If he can not join, that will be through the

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<sup>1</sup> 18 Edw. I., Stat. 1. (*Quia emptores*).

## No. 45.

estraunge, qe ne poet pledre fors hors de nostre fee A.D. 1341.  
ou chose qe tant vaut; et ore ad il conu le fee, et la  
quantite ne poet il contrepledre; jugement, et prioms  
retourn. Et quant [a] celui qe se voudreit joyndre,  
il est estrange auxi, et la cause de son joynd[r]e ent[r]e  
nous ne poet estre trie en la quantite; jugement sil  
se puisse faire partie.<sup>1</sup>—*Blayk.* Ceo qil nest mye  
partie al avow[r]e, la ou il est vostre tenant par  
statut, cest vostre defalte qe vous nussez avowe sur  
lui, et il est prive a vous et se joynt a son tenant,  
gest en lieu dacquittance; et autrement serreit trop  
graund meschief.—*Thorpe.* Inconvenient est dautre  
part si la cause del joyndre serreit trie entre nous,  
et issi vendreit un autre, et le tierce, &c.—*PARN.* Sil  
ne poet joyndre, ceo serra par faute de vostre avowere

" lelmo de Coucy ut filio et heredi,  
" &c., qui quidem Willelmus post-  
" modum de medietate illa, simul  
" cum aliis terris et tenementis, fe-  
" offavit prædictum Willelmum fili-  
" um Willelmi de Coucy tenendis  
" sibi et heredibus suis in perpetu-  
" um. Et postea dominus Rex  
" nunc prædictum feoffamentum  
" per prædictum Willelmum de  
" Coucy sic factum per chartam  
" suam ratificavit et confirmavit,  
" virtute cujus feoffamenti præ-  
" dictus Willelmus filius Willelmi  
" devenit tenens prædicti Abbatis  
" per statutum, &c., et prædictus  
" Johannes se attornavit eidem  
" Willelmo de servitiis suis, &c.,  
" qui quidem Willelmus filius  
" Willelmi super hoc venit et dicit  
" quod ipse perquisivit prædictam  
" medietatem villæ prædictæ de  
" præfeto Willelmo de Coucy  
" simul cum aliis terris et tene-  
" mentis per nomen medietatis

" baronis de Ulverstone, quam  
" medietatem ipse tenet de præ-  
" dicto Abbate per fidelitatem et  
" servitium quinque solidorum per  
" annum pro omni servitio. Et  
" dicit quod ipse sæpius obtulit  
" prædicto Abbati servitia sua de  
" medietate illa, et adhuc paratus  
" est ea ei facere, &c. Et petit  
" quod ipse jungere se possit  
" prædicto Johanni tenenti suo  
" in respondendo, &c. Et iidem  
" Willelmus et Johannes petunt  
" judicium si prædictus Abbas  
" super alium quam super ipsum  
" Willelmum captionem prædic-  
" tam advocare possit, &c."

<sup>1</sup> The replication was, according  
to the roll, as follows:—"Et Abbas  
" dicit quod prædictus Johannes fa-  
" cit se extraneum in advocare suo  
" prædicto [*sic*], per quod in ore  
" suo non jacet aliquod placitum  
" ad extraneandum ipsum Abbatem  
" de servitiis suis nec de tenente

## No. 45.

A.D. 1341. fault of your avowry in not avowing on him, which shall be taken rather to the prejudice of yourself than of him; for otherwise it would follow that the plaintiff would recover damages against him by a writ of Mesne, whereas he can not acquit the plaintiff on account of your mistake, &c.—*Thorpe*. He who was already a party to us, before any one joined himself, admitted our fee, and counterpleaded the quantity of our services, and gave us another tenant, which plea was in abatement of the avowry, which does not lie in his mouth; wherefore on his plea we have the advantage of having the Return; for, if there ought to be any joinder at all, it should be before plea pleaded. Besides, he is a stranger who wishes to join himself, and even though he were privy to the avowry, yet after the plaintiff had given an answer he could not join. Moreover, he is not in the case of the Statute for tendering services; for the Statute<sup>1</sup> speaks of tenants in demesne, for the mischief of the distress; but this one makes himself tenant in service, who is not put to any mischief, &c.; but always, for a plea, we pray judgment on the plea of the plaintiff who is a party.—*PARNING*. I know well that the form of the plea should be that the joinder should be made before any plea to the avowry be pleaded; for if the plaintiff plead, and on that demand his judgment, the other shall not afterwards join himself.—*Blaik*. That may well be if he has pleaded to judgment; but the law

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<sup>1</sup> 13 Edw. I. (Westm. 2) c. 9.

## No. 45.

qe vous navowez pas sur lui, quele chose serra pluis A.D. 1341. receu en damage de vous mesmes qe de lui; qar autrement ensuereit qe le pleintif recovereit damages vers lui par bref de mene, la ou [il] ne lui poet acquiter pur vostre mesprison, &c.—*Thorpe*. Celui qest partie avant a nous, primes qe nule se joynt, conust nostre fee, et contrepleda la quantite de noz services, et nous dona autre tenant, quel plee fust al abatement del avowere, qe ne gist mye en sa bouche; par quei sur son plee nous sumes al avantage daver retourne; qar, si joyndre y dust estre, ceo serreit devant plees plede. Ovesqe ceo, il est estrunge qe ceo voet joyndre, et tout fust il prive al avowere, apres ceo qe pleintif avoit done respons il ne purreit joyndre. Ioutre cella, il nest pas en cas destatut de tendre service; qar le statut parle des tenants en demene, pur le meschief de la destresse; mes cestui se fait tenant en service, qe nest a nul meschief, &c.; mes touz jours, pur plee, nous prioms jugement sur le plee le pleintif qest partie.—*PARN*. Jeo say bien qe fourme de plee serreit qe le joyndre se freit avent qe nul plee al avowere soit plede; qar si le pleintif plede, et sur ceo demande son jugement, lautre ne se joindra mye apres.—*Blayk*. Bien poet estre sil eit plede en jugement; mes ceocy est ley, qe joyndre se

" suo, et, ex quo idem Johannes cog-  
 " novit quod prædicta tenementa  
 " tenentur de ipso Abbate, petit  
 " judicium et returnum sibi ad-  
 " judicari, &c., et quo ad hoc quod  
 " prædictus Willelmus petit quod  
 " ipse jungere se possit præfato  
 " Johanni in respondendo, &c.,  
 " dicit quod idem Willelmus est  
 " extraneus ad advocare suum  
 " prædictum et non dicit se esse  
 " tenentem ipsius Abbatis per  
 " antiquam legem sed solummodo

" per novum statutum, in quo casu  
 " nullus se jungere potest tenenti  
 " suo, nec per antiquam legem  
 " nisi ille super quem distringens  
 " advocat. Unde petit judicium  
 " si ad ea quæ prædictus Willelmus  
 " dicit necesse habeat respondere,  
 " &c." After this there were, ac-  
 " cording to the roll, several adjourn-  
 " ments. At last John de Tornerghe  
 " did not come on the day given.  
 " Judgment was therefore given for  
 " the Abbot to have the Return.

## No. 45.

A.D. 1341. is this, that joinder shall not be made except between lord and tenant; and therefore the form of plea is that the plaintiff shall show himself to be tenant to him who will join himself, and to that intent we showed our estate, and we did not plead to judgment before the joinder.—*Thorpe*. You showed also that we have another tenant, which was in abatement of the avowry, and that by law you ought not to have done, for the plaintiff and he who joins himself might disclaim; and you alone demanded judgment whether we could avow on any other than W. Coucy; but the Court would not then record that.—And yet so it was.—PARNING. If what W. Coucy says be true, it is your fault that the avowry is not made on him, and no law will give advantage to you or prejudice to your adversary through your default; and as to your statement that because he is tenant in service he is not in the case of the Statute, I will prove the reverse to you; for if the distress were made in parcel which he held in demesne, and he made himself plaintiff, yet, even though you were to avow on the other, we should compel you to avow on him just as much for that which he held in service as for that which he held in demesne.—*Thorpe*. In that case he would be party to the Replevin; not so here. And as to your allegation of mischief, I say that there is no mischief except for the tenant in demesne on whom the distress runs, and that mischief will be allowed by the law still in use; for if there be several mesnes between a lord and a tenant, and the chief lord distrain, he can avow on his tenant, where rent perchance is in arrear; or if he avow on a stranger, joinder in such case is not given, and so the tenant is without an answer.—PARNING. That is not the act of the chief lord that there are several mesnes, as in this case it is your act that you avow wrongly on one other than him

## No. 45.

fra pas forsque entre seignur et tenant; et pur ceo A.D. 1341. forme de plee est qe le pleintif se moustra estre tenant a celui qe se joyndra, et a cele entente si moustrames nostre estat, et nous pledames pas en jugement avant le joyndre.—*Thorpe*. Vous moustrates auxi qe nous avoms autre tenant, qe fust al abatement de avowere, et ceo par ley ne duissez aver fait, qar le pleintif et celui qe se joynt purrent desclamer; et vous soule demandastes jugement si sur autre qe sur W. Coucy purroms avower; mes Court ne voleit mye recorder. celle adonques. — *Et tamen ita fuit*.—PARN. Sil soit verite ceo qe W. Coucy dit, il est vostre defaute qe lavowere nest mye fait sur lui, et nulle ley vous durra avantage ne prejudice a vostre adversarie par vostre defaute; et ceo qe vous dites qe pur ceo qil est tenant en service et issi noun pas en cas destatut, jeo vous prove le reverce: qar si la destresse fust fait en la parcele quele il tient en demene, et il se fist<sup>1</sup> pleintif, tout avowerez vous sur lautre, nous<sup>2</sup> vous chacerioms<sup>3</sup> de avower sur lui auxi avant de ceo qil tient en service come en demena.—*Thorpe*. La serreit il partie al *Replegiari*; *non sic hic*. De ceo qe vous allegez meschief, jeo die qil ny ad pas meschief forsque pur le tenant en demene sur qi la destresse court, et cel meschief serra suffert par la ley qest uncore use; qar si plusours menes y soient entre le seignur et le tenant, et le chief seignur destreigne, il purra avower sur son tenant, ou rente par cas est arere; ou sil avowe sur estrange, joyndre en tiel cas nest mye done, et si est le tenant saunz respons.—PARN. Ceo nest mye le fet le chief seignur, qil y sont plusours menes, come il est en ceste cas vostre fet qe vous avowez malement sur autre qe sur vostre

<sup>1</sup> T., fust.<sup>2</sup> T., vous.<sup>3</sup> T., chacereit.



## No. 45.

A.D. 1341. who is your tenant; and in the case which you put, even if there be several mesnes, each one can have a recovery against another, and the tenant is not put to any mischief; and also he who is nearest to the lord paramount can join himself, if he please, to the tenant in demesne, and plead, for it is not for the lord to counterplead the joinder of any of the mesnes, although the tenant in demesne do not hold of him who would join himself.—This was denied.—*Thorpe*. If he were to join himself, and we were therefore to take issue with them on the feoffment or on the quantity, &c., or the tender, and W. Coucy did not come afterwards, this plaintiff, who is a stranger, could not be sole party to the averment; wherefore, &c.—*HILLARY*. W. Coucy is here in his own person, and can not make an attorney; and upon this accept the joinder if you will, or take a day on the avowry, &c.—*Thorpe*. Then we shall lose the advantage we have in that our fee has been admitted by the plaintiff, if our answer be not entered; and we think that by law no one shall join but he on whom the avowry is made.—*PARNING*. Then it will follow that you will be satisfied as to your services by the hand of your tenant, and will nevertheless distrain the tenant and have the Return, where his mesne can not acquit him by reason of your default; and that would be hard. As to your saying that if issue be taken between you, and W. Coucy afterwards make default, J., who is plaintiff, can not be party, you say truly; and therefore you shall have the Return.

## No. 45.

tenant; et en le cas qe vous mettes, uncore tout sont A.D. 1341. ils plusours menes, chescun poet aver recoverir vers autre, et le tenant sanz meschief; et auxi celui qe pluis pres est al [s]eignur paramont se poet joyndre a le tenant en demene, sil voet, et pleder, qar il nest mye al seignur de contrepledre le joyndre de nul de menes, tout ne teygne mye le tenant en demene de celui qe se voet joyndre.—*Quod fuit dedictum.*—*Thorpe.* Sil soi joynast, et nous preissoms issu ovesqe eles pur le sur le feffement ou sur la quantite, &c., ou le tendre, et W. Coucy venist mye apres, cestui pleintif qest estrange ne purreit estre soul partie al averement; par quei, &c.—*HILL.* W. Coucy est en propre persone, et ne poet faire attourne; et sur ceo resceivez le joyndre si vous voillez, ou pernez jour sur lavowere, &c.—*Thorpe.* Donques perdrons lavantage de ceo qe nostre fee est conu par le pleintif, si nostre respons ne fust entre; et nous entendoms par ley qe nul se joyndra fors celui de sur qi lavowere est fait.—*PARN.* Donques ensuerait qe vous serrez servy de voz<sup>1</sup> services par la mayne vostre tenant, et nepurquant destreyndrez le tenant et averez retourn, la ou son mene ne lui poet aquiter par vostre defaute; et ceo serra dure. A ceo qe vous parles si issue se prist entre vous, et W. Coucy apres fait defaute, qe J., qest pleintif, ne poet estre partie, vous dites verite; et pur ceo vous averez retourn.<sup>2</sup>

<sup>1</sup> T., *nos.*

<sup>2</sup> There are added the words *Plus infra, Hilarii, xvij., ibi, &c.*; but reports of the 17th year of the reign are not included in T. The case, however, is given in its entirety in L., partly under the head of Easter Term, 15 Edward III., and partly under the head of Hilary Term, 17 Edward III., and the con-

clusion of the case appears also in 25,184 and Harl. 741, under the head of Hilary Term, 17 Edward III. The second report from the last-mentioned three MSS. follows. It will be observed that neither the report in T., nor the other agrees with the report printed in Y. B., H. 17 E. 3. No. 52, pp. 14-15, which is, in fact, an abridgment.

## No. 45.

A.D. 1841. § John Tournier brought his Replevin against the Abbot  
 Replevin. of Furness, who avowed on Ingram Coucy, as on his tenant, for services in arrear, and alleged seisin through the hand of Christiana de Lindsey, and set forth conveyance from Christiana to I. Coucy.—*Blair*. You have here William Coucy, who tells you that William son and heir of Christiana, who held of the Abbot, enfeoffed him of a moiety of the vill of T., and the plaintiff held of Christiana the moiety of the vill of T., and attorned. And William Coucy joins himself to John the plaintiff, and says that he is the Abbot's tenant, and has often tendered you the services due, and is still ready to perform them. (And he mentioned precisely what the services were.)—*Thorpe*. The plaintiff and the person who joins himself to the plaintiff are both strangers to our avowry; wherefore, &c. And, besides, the Statute *Quia emptores terrarum* does not aid any one to make himself privy except the feoffee when he is distrained in the land of which he is feoffee, and not in a case in which he is mesne, for the mesne is not aided by the Statute, because, if mischief happens to him, it arises out of his own act in attorning before having surety for acquittal of services.—*PARNING*. Then, if W. were distrained in the demesnes, you grant that he would be made privy, and if you, of your own act, have taken distress in the land of the tenant of him who held of you in service, that must be an injury to him. Besides, he cannot acquit his tenant in any manner other than by such joinder.—*Thorpe*. And if there were several mesnes, would there not then be ground for alleging mischief?—*PARNING*. Still the highest mesne would join himself with the tenant to plead with his lord. Besides, as he on whom you avow can join by common law, so also can he who is made your tenant by Statute and put in his place.—

## No. 45.

§ Johan<sup>1</sup> Tourner porta son *Replegiari* vers Labbe de Fourneux, qe avowa sour Ingram<sup>2</sup> Coucy, com sour son tenant, pur services arreres, et lia seisine par my la mayn Christiene de Lyndesey [et fist conveyaunce de Christiene a I. Coucy].<sup>3</sup>—*Blaik*. Vous avez yci William Coucy, qe vous dit qe William fitz et heir Christiene [qe tient del Abbe]<sup>4</sup> luy enfeffa de la moyte de la ville de T. [et ce qe se pleint tient de Christiene moite de la vile de T., et sattourna].<sup>5</sup> Et il se joynt a Johan pleintif, et dit quil est son tenant, et sovent vous ad tendu lez services duez, et unqore est prest, et dit en certain lez services.—*Thorpe*. Celuy qe est pleyntif et celuy qe se joynt a luy sount ambedeux estranges a nostre avowere; par quei, &c. Et, oustre ceo, le statut *Quia emptores terrarum* neide nul home, &c., a se faire prive forsque le feffe la ou il est destreint en la terre dont il est feffe, et ne mye en cas ou il est meen, qar le mesne nest pas eide par le statut,<sup>4</sup> qar, si meschef luy avyegne, ceo est de son fait qil atturna avant qil eit sourte del aquitance.—PARN. Donques, si W. fuit destreint en les demenes, vous grantez qil se freit prive, et si vous, de vostre fait, avez pris destresse en la terre son tenant qe tient de vous en service, ceo luy doit grever. Estre ceo, il ne put en autre manere aquiter soun tenant fors par tiel joyndre.—*Thorpe*. Et sil fussent plusours meens, homme naf-foundra pas meschef?—PARN. Unqore le plus laut meen se joyndra ove le tenant de pledre ov son seignour. Estre ceo, auxi come celuy sour qi vous avowes purra joyndre par comune [ley], auxi put celuy qest fait vostre tenant par statut et mys en son lieu, &c.—

A.D. 1341.

Replegiari.<sup>5</sup>

[Fitz. Avowere, 108.]

<sup>1</sup> This report of the case is from L. alone, until otherwise stated.

<sup>2</sup> L., Johan.

<sup>3</sup> The words between brackets are interlined in a later hand.

<sup>4</sup> L., feat.

<sup>5</sup> There are added, in the margin, in a later hand, the words *Residuum en le lyver enprint*, H. 17 E. 3., f. 6.

## No. 45.

A.D. 1841. *Pulteney*. There would be mischief if the joinder were not allowed in this case, for if nothing be in arrear it is mischief for the plaintiff, in that he cannot either have acquittal of services by writ of Mesne, or plead nothing in arrear, because he is a stranger; and if the mesne would not join himself to the tenant who is plaintiff, even though he had rendered all the service that he ought to his lord paramount, still, inasmuch as he would not join his tenant for the purpose of answering the avowry, he would be charged with damages on a writ of Mesne for non-acquittal, because, when he can acquit his tenant and will not, the law recognises that the tenant is distrained through his default, and so there would be mischief for the mesne if he could not join.—*SCHARSHULLE*. You say that there is mischief, and I say that there is not, for a stranger may well plead Nothing in arrear, and that has often been seen, although it is said that this is not the truth. (And *SCHARSHULLE* said this many times in this plea.—And *WILLOUGHBY* came in and affirmed this also). And as to the other mischief of which you speak—that the mesne would be charged with damages if he did not join, though nothing is in arrear—that is not law, for, when he has rendered to his lord the service that he ought, there is legally no default in him, even though his tenant be distrained.—*Thorpe*. If there be several mesnes, and the lord para-

## No. 45.

*Pult.*<sup>1</sup> Meschief serreit si le joyndre ne fut pas suffert A.D. 1341. en ceo cas, qar si rien soit arrere il est meschief pur le pleyntif, qe ne put aver acquittance par bref de mene, ne pleder rien arrere,<sup>2</sup> pur ceo qil est estraunge; et si le mene ne se voleit joyndre al tenaunt pleintif,<sup>3</sup> tout avoit il fait qant qil devoit faire a son<sup>4</sup> seignour paramount,<sup>5</sup> unqore pur ceo qil ne voleit joyndre a soun tenaunt pur avoir respons al avowere,<sup>6</sup> il serreit charge de damages en bref de mene pur noun acquittance, pur ceo qe,<sup>7</sup> qant il put acquiter<sup>8</sup> soun tenaunt et ne veot, la<sup>9</sup> lei conust qil est destreint par sa defaute, et issint serreit meschief pur le mene sil ne purreit joyndre.—SCHAR. Vous dites qil y ad meschief, et jeo die qe<sup>10</sup> noun, qar estraunge pledera bien<sup>11</sup> Rien arrere, et ceo ad este sovent vew, coment qe homme<sup>12</sup> parle qe ceo nest pas verite. (*Et hoc dixit sæpe in isto placito.*—Et<sup>13</sup> WYLBY.<sup>14</sup> sourvint et<sup>15</sup> *hoc affirmavit.*) Et qant al altre meschief qe vous dites qe le mene serreit<sup>16</sup> charge des damages sil ne se<sup>17</sup> joynnast,<sup>18</sup> la ou rien est arrere, ceo nest pas lei, qar qant il ad fait a soun seignour ceo qil deit faire de lei<sup>19</sup> il ny ad nul defaute en luy, mesqe soun tenaunt soit<sup>20</sup> destreint.—*Thorpe.* Si plusours menes isoient, et le seignour paramount avowe

<sup>1</sup> From this point to the end the report is found under the head of Hilary Term, 17 Edw. III., in L., 25184, and Harl.

<sup>2</sup> arrere is not in 25184.

<sup>3</sup> pleintif is not in L.

<sup>4</sup> L., aschun.

<sup>5</sup> paramount is not in L.

<sup>6</sup> L., altre.

<sup>7</sup> qe is not in L.

<sup>8</sup> L., aver acquite.

<sup>9</sup> la is in L. alone.

<sup>10</sup> For the words jeo die qe there are substituted in 25184 the words semble qe, and in Harl. the words il semble.

<sup>11</sup> bien is not in L.

<sup>12</sup> Harl. qome, instead of qe homme.

<sup>13</sup> Et is in Harl. alone.

<sup>14</sup> L., Mounbray.

<sup>15</sup> et is not in Harl.

<sup>16</sup> L., serra.

<sup>17</sup> se is in Harl. alone.

<sup>18</sup> 25184, yoinast; and throughout the report the letter y is in 25184 commonly substituted for the letter j in every mood and tense of the verb joindre.

<sup>19</sup> The words de lei are in L. alone.

<sup>20</sup> soit is not in 25184.

## No. 45.

A.D. 1341. mount avow on his tenant, joinder does not lie in such case, but only where there is one mesne alone between the plaintiff and the avowant ; and therefore, if nothing be in arrear, and the lord paramount distrain, the tenant may have a writ of Trespass on account of the mischief, for he cannot be aided or have his purpose by Replevin.—*Blak.* Writ of Trespass never lies against the lord in respect of a distress made within his fee, even though nothing be in arrear ; witness the Eyre of London before HERLE.—SCHARSHULLE denied this, and said that the writ does lie when nothing is in arrear.—SCHARDELOWE. It may be clearly seen that there is mischief for the plaintiff, but in this case he can not be relieved by law, and I tell you plainly that the proper acquittal would have been for the mesne to have put his beasts in pound instead of the plaintiff's beasts, and to have sued deliverance afterwards, and so have made himself a party ; but now he is not a party either by plaint or by avowry.—*Stouford.* There are different kinds of privity—in fact and in law—as, for instance, he upon whom avowry is made is privy in law, and one may also in other manner be privy in fact, even though one be stranger by the avowry, for if the fact as to us be such as we say, the avowry should have been made upon us, and consequently we are privy in deed to the avowant, and consequently we can join.—SCHARSHULLE. Then I should like to know how this matter could be tried, and what would be the position of the plaintiff until enquiry had

No. 45.

sour soun tenant, joyndre en tel cas ne gist pas, mes ou A.D. 1341. il ad soulement un mene entre le pleyntif et lavowaunt; et pur ceo, si rien soit arrere, et le seignour paramount destreigne, il put aver bref de Trespase pur le meschief, qar par *Replegiari* il ne put estre eide ne avoir soun purpos.—*Blaik.* Jammes ne<sup>1</sup> gist bref de Trespas countre le seignour de destresse<sup>2</sup> fait deynz soun fee, tout soit rien arrere, *teste* leire de Loundres devant *HERLE.*—*SCHAR. negavit illud.* et dit<sup>3</sup> qe le bref<sup>4</sup> gist qant rien est arrere.—*SCHAR.* Homme veit<sup>5</sup> bien<sup>6</sup> qil y<sup>7</sup> ad meschief pur le pleyntif, mes en ceo cas il ne put par la<sup>8</sup> lei estre assouz,<sup>9</sup> et jeo vous die bien qe le propre acquittance serreit pur le mene davoit<sup>10</sup> mys sez bestes en parke pur les bestes le pleyntif, et puy avoir siwy la deliveraunce, et issint soi avoir fait partie; mes ore nest il pas<sup>11</sup> partie ne par pleynte<sup>12</sup> ne<sup>13</sup> par avowere.<sup>14</sup>—*Stouff.* Il y<sup>7</sup> ad diverses privetes, en fait et en lei, come celui sour qi avowere<sup>15</sup> est fait est<sup>16</sup> prive en lei, et auxi put homme par altre manere estre prive en fait, tout soit il estraunge par lavowere, qar<sup>17</sup> si nostre<sup>18</sup> fait soit tiel come nous dioms,<sup>19</sup> lavowere dust avoir este<sup>20</sup> fait sour nous,<sup>21</sup> et *per consequens* nous sumes prive en fait a luy, et *per consequens* nous poms joyndre. — *SCHAR.* Donques voudrai jeo savoir coment cest chose serreit<sup>21</sup> trie, et ou le pleyntif

<sup>1</sup> ne is not in Harl.

<sup>2</sup> 25184, and Harl., prise.

<sup>3</sup> 25184, and Harl., dixit.

<sup>4</sup> L., qil, instead of qe le bref.

<sup>5</sup> L., veot; Harl., voet.

<sup>6</sup> bien is not in L.

<sup>7</sup> y is not in L.

<sup>8</sup> la is not in Harl.

<sup>9</sup> L., assouch; Harl., assouth.

<sup>10</sup> L., pur aver.

<sup>11</sup> pas is in L. alone.

<sup>12</sup> L., le pleintif, instead of par plainte.

<sup>13</sup> ne is not in L.

<sup>14</sup> L., lavowere.

<sup>15</sup> 25184, en.

<sup>16</sup> qar is in Harl. alone.

<sup>17</sup> L., vostre.

<sup>18</sup> L., vous dites, instead of nous dioms.

<sup>19</sup> L., serra, instead of dust avoir este.

<sup>20</sup> L., vous.

<sup>21</sup> L., serra.



## No. 45.

A.D. 1841. been made of this matter, since he could not be party to the issue, because you are not yet joined with him.—*Stouford*. He would be so, because the joinder is with his consent, and joinder would not be made otherwise, and therefore he would be, in a manner, party.—*Thorpe*. Suppose ten came, which of them ought to join?—*HILLARY, ad idem*. Suppose he upon whom the avowry is made were to come and wish to join, no one could forbid him, and consequently this one can not join.—*Stouford*. Neither he nor any other would join without the consent of the plaintiff, and, even though he upon whom, &c., were here, inasmuch as he has divested himself, the plaintiff would not allow him to join.—*Thorpe*. The Statute provides in favour of feoffees that, when they are parties, they shall compel the lords to avow upon them, but as to joinder they are not aided; besides he did not make himself privy except by tender [of services], and, even though he were feoffee, the law is to the effect that we have homage of his feoffor also, and that he can never tender, and he is consequently a stranger unless made privy by avowry.—*Grene*. Suppose the tenant lease to another for term of life, and the then tenant make plaint on Replevin against the lord, and the lord avow on a stranger, the plaintiff shall by law have aid of his lessor, and, when the lessor comes and is joined, the two shall abate the avowry because it is made upon a stranger; and even though the then tenant be enfeoffed in tail (in which case Aid-prayer does not lie) or in fee simple before the Statute, and the feoffor be willing, as mesne, to join his tenant who is plaintiff, it is reasonable that he be admitted to the

## No. 45.

devendreit tanqe cest chose fut enquis, qar il ne purreit A.D. 1341.  
estre partie<sup>1</sup> a la myse parqe qunqore vous nestes pas<sup>2</sup>  
joynt a luy.—*Stouff.* Si serreit, qar de soun assent est  
le joyndre, et<sup>3</sup> autrement ne se freit<sup>4</sup> [pas joyndre, par  
quei il serreit]<sup>5</sup> en manere partie.—*Thorpe.* Jeo pose  
qe x. venissent, qi deux duist<sup>6</sup> joyndre?—*HILL., ad idem.*  
Jeo pose que celuy sour qi lavowere est<sup>7</sup> fait venist et  
se<sup>8</sup> voudra joyndre, nul homme ne<sup>9</sup> luy veiereit,<sup>10</sup> et *per  
consequens* cesti ne se put joyndre.—*Stouff.* Il ne<sup>11</sup> nul  
altre se joyndreit sanz assent le pleyntif, et, mesqe celuy  
sour qi, &c., fuit cy, le pleyntif, purceo quil savoit demis,  
ne luy suffreit pas de joyndre.—*Thorpe.* Statut doune  
pur les feffez qe, qant ils sount partiez, ils chacerount<sup>12</sup>  
les seignours davower sour eux, mes qant al joyndre ils  
ne sount par eidez; ovesqe ceo, il ne se fist<sup>13</sup> pas prive  
forsqe par tendre, et, tout fut il feffe, la<sup>14</sup> lei veot qe nous  
eioms homage et auxi de soun feoffeour, quel il ne purra  
jammes teundre, *per consequens* estraunge sil ne fut fait  
prive par<sup>15</sup> avowere.—*Grene.* Jeo pose qe le tenaunt  
lest<sup>16</sup> a autre a terme de vie, et le tenaunt se pleynt a le  
*Replegiari* vers le seignour, et il avowe sour estraunge, le  
pleyntif de lei avera eide de soun lessour, et, qant il  
vendra et serra joynt, eux deux abaterount lavowere,  
purceo qil est fait sour estraunge; et mesqe le tenaunt  
donques<sup>17</sup> est feffe en la taille, en<sup>18</sup> quel cas eide prier ne  
gist pas, ou en fee simple avaunt estatut, et il come mene  
voille joyndre a soun tenaunt qest pleyntif, il est resoun

<sup>1</sup> L., prive; before the word prive there are inserted in 25184 the words par yondre par quei serreit en.

<sup>2</sup> pas is in Harl. alone.

<sup>3</sup> L., ou.

<sup>4</sup> Harl., refiert, instead of se freit.

<sup>5</sup> The words between brackets are not in 25184.

<sup>6</sup> L., deit.

<sup>7</sup> Harl., fut,

<sup>8</sup> se is not in L.

<sup>9</sup> ne is in 25184 alone.

<sup>10</sup> Harl., verreit.

<sup>11</sup> L., et.

<sup>12</sup> L., chacerent.

<sup>13</sup> Harl., fait.

<sup>14</sup> la is in L. alone.

<sup>15</sup> L., al.

<sup>16</sup> 25184, le leust.

<sup>17</sup> donques is not in L.

<sup>18</sup> L., et.

## No. 45.

A.D. 1341. same advantage, &c.—*Moubray*. Law ought to be in accordance with reason, and to take away mischief, except where the contrary practice has been in use as law; and here the mischief is apparent, and no one was ever forejudged of joinder in such case, and therefore you ought, according to law, to allow the joinder; and it is seen that on account of mischief you amend matters which were in former times practised as law, without the aid of Parliament—as, for instance, where an heir is vouched as being under age, and the demandant, to expedite his suit, says that the vouchee is of full age, and prays that the vouchee be viewed by the Court, although the Process used always to be by Grand Distress, you change that now and give *Sequatur suo periculo* on account of the mischief of the law; *a fortiori* you can take away mischief in this case, in which the reverse has never been the practice.—*Pole*. William Coucy appears by attorney, and appearance by attorney does not lie until he be joined; therefore we pray to be quickly delivered.—*Blak*. Such appearance does lie, because he is in the service of the King, and one may make his attorney to be admitted to defend his right even though he be not party.—*SCHARSHULLE*. One has been by judgment forejudged of joinder in this case, witness the case of Richard de Alaysdon in the fifth year.—*Pulteney*. That was not adjudged.—And afterwards Coucy died, &c.

## No. 45.

qil soit resceu<sup>1</sup> a mesme lavantage, &c.—*Mounbray*. A.D. 1341. Lei deit acorder a resoun, et oster meschief, si le reverse nait<sup>2</sup> este use pur lei; et ore le meschief est apparent, et unques nul<sup>3</sup> fut forjuge del joindre en tiel<sup>4</sup> cas,<sup>5</sup> par quei par<sup>6</sup> lei vous le devez<sup>7</sup> souffrir; et homme veit<sup>8</sup> qe chose qe fut auncienement use pur lei, pur le meschief, vous lamende;<sup>9</sup> de vous mesmes saunz parlement,<sup>10</sup> come ou<sup>11</sup> un<sup>12</sup> heir est vouche come<sup>13</sup> deynz age, et le demandant en haste de sa suyte die qil est<sup>14</sup> de pleyn age, et prie qil soit vew de Court,<sup>15</sup> la ou le proces soleit estre toutz jours par graunt destresse, vous le changes ore et dones<sup>16</sup> *Sequatur suo periculo* pur le meschief de ley;<sup>17</sup> a plus fort, poetz ouster meschief en ceo cas ou<sup>18</sup> le reverse ne fut unques usee.—*Pole*. William Coucy<sup>19</sup> est par attourne, qe ne gist pas avant qil soit<sup>20</sup> joynt; par quei nous prioms<sup>21</sup> leggerement estre deliverez.—*Blak*. Si fait, qar il est en service le Roi, et homme fait soun attourne destre resceu a defendre soun dreit et sil uest pas partie.—*SCHAR*. Par agarde il ad este forjuge de joyndre en ceo cas, *teste* Richard de Alaysdon<sup>22</sup> *anno* v<sup>to</sup>.<sup>23</sup>—*Pult*. Ceo ne fut pas ajuge.—Et puy Coucy morust, &c.

<sup>1</sup> resceu is in L. alone.<sup>2</sup> nait.<sup>3</sup> L., ne.<sup>4</sup> Harl., ceo.<sup>5</sup> There are substituted in L., for the words del joindre en tiel cas, the words en le cas de joyndre.<sup>6</sup> L., la.<sup>7</sup> L., nous deit, instead of vous le devez.<sup>8</sup> L., veot; Harl., voet.<sup>9</sup> L., luy mende.<sup>10</sup> After the word parlement there are inserted, in 25184, the words *Concordat supra Pascha, et ita sit* en eide prier auxi.<sup>11</sup> ou is not in Harl.<sup>12</sup> un is not in 25184.<sup>13</sup> L., qest.<sup>14</sup> 25184, qe, instead of qil est.<sup>15</sup> The words de Court are omitted from 25184; the reading in Harl. is "&c."<sup>16</sup> L., luy dones; Harl., le dones ore, instead of le changes ore et dones.<sup>17</sup> The words de ley are not in L.<sup>18</sup> 25184, desicom.<sup>19</sup> Harl., Counci.<sup>20</sup> 25814 and Harl., fuit.<sup>21</sup> 25184, poms.<sup>22</sup> For the words *teste* Richard de Alaysdon, there are substituted in L. the words *Thorpe*. R. de Laisdonn. The words Richard de are omitted from Harl.<sup>23</sup> 25184, iiij<sup>to</sup>. The case has not been identified.

## Nos. 46, 47.

A.D. 1341. (46.) § Note that the Lady of Latymer, who heretofore prayed to be admitted upon a writ of Dower brought against her and her husband, as against guardian, answered by attorney made by writ in the Chancery; and such warrant was allowed, notwithstanding that she was not yet admitted, and it is pending whether she shall be admitted.—And in Trinity term HERLE came and said that she was not within the mischief for remedy of which the Statute<sup>1</sup> was made, and he said that in this case she had nothing in the wardship, and that the writ would be good against the husband alone, and that if they were ousted, the husband or his executors would have the action and not the wife.—*Thorpe*. They hold by lease from the King.—HEPPESCOTES. What of that? If you were admitted, you would not have aid of the King.—And afterwards, by judgment, the woman who was demandant recovered, because the wife could not be admitted.—And note that the husband and his wife had made default after they had waged their law as to non-summons, &c.

Dower. § On a writ of Dower against a man and his wife, guardian of the lands, &c., the wife prayed to be admitted by reason of the default of the husband.—*Blak*. Wardship is the husband's chattel, which he may lose at his pleasure; besides, she came by attorney, whereas there cannot be an attorney until she is made party, for she prayed as a feme sole.

Fine. (47.) § *Derworthy* drew a fine, purporting that N. acknowledges the tenements to be the right of H., as those which H. and A. his wife have of N's. gift, and for that acknowledgment H. and A. grant and render to N. to hold for the lives of H. and A., remainder after their deaths to the heirs of the husband.—*HILLARY*. You shall not have a fine to render for the life of him who renders, for he can not limit an estate to his heirs

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<sup>1</sup> 13 Edw. I. (Westm. 2.) c. 3.

## Nos. 46, 47.

(46.)<sup>1</sup> § *Nota* qe la dame de Latymer, qautrefoitz pria A.D. 1341.  
 destre resceu en bref de dower porte vers lui et son <sup>Nota.</sup>  
 baroun, come vers gardein, respondi par attourne fait  
 par bref en Chauncellerie; et tiel garrant est alowe,  
*non obstante* qele nest pas uncore resceu, et *pendet* si  
 ele serra resceu.—*Et Termino Trinitatis*, HERLE vient  
 et dit qil nest mye en meschief pur quei lestatut fust  
 fait, et dit qil nad rien en cest cas en le garde, et le  
 bref serroit bon vers le baroun soul, et sil fuissent  
 oustes, le baroun ou ses executours averont laccion et  
 noun pas la femme.—*Thorpe*. Il teignent du lees le  
 Roi.—HEPP. De ceo quei? Si vous fussez resceu, vous  
 naverez mye eide du Roi.—Et puis, par agard, la femme  
 demandante recoveri, pur ceo qele nest mye resceivable.  
 —*Et nota* qe le baron et sa femme avoient fait defaute  
 apres ceo qils avoient gage la ley de nonsomons, &c.

§ En<sup>2</sup> un bref de dower vers un homme et sa femme, Dower.  
 gardein dez terres, &c., par defaute le baron la femme pria  
 destre resceu.—*Blak*. La garde est chatel al baron, qil put  
 perdre a sa volunte; estre ceo, ele vynt par attourne, ou  
 attourne ne pust estre tanqe soit fait partie, qar ele pria come  
 femme soule, &c.

(47.)<sup>3</sup> § *Derworth*. treit une fyne, qe N. conust les *Finis*.  
 tenementz estre le dreit H., come ceo qe H. et A. sa  
 femme ont de son doun, et pur cele reconisance H. et  
 A. grantent et rendent a N. a tenir a les vies H. et A.,  
 apres lour decees remeyndre a les heirs lè baroun.—  
 HILL. Vous naverez fyne de rendre a la vie celui  
 qe rent, qar il ne poet tailler estat, vivant lui mesme,

<sup>1</sup> From T. alone, as far as the  
 point at which the larger type ends.  
*Ses Y. B., H. 15 E. III., No. 26.*

<sup>2</sup> This report of the case is from  
 L. alone.

<sup>3</sup> From T. alone.

## No. 48.

A.D. 1341. while he is living himself, unless it commence in himself, and that by means of the reversion reserved.—Therefore *Derworthy* drew up the fine thus:—N. acknowledges the tenements, &c., to be the right of H. as those, &c., and for that acknowledgment the husband and his wife render to N. for his life, rendering to the husband and his wife a rose during their lives, and, if N. survive the husband and his wife, rendering to the heirs of the husband 20*l.* by the year. And that was admitted.

A Sheriff's Return. (48.) § *Thorpe* rehearsed how one sued execution upon a Statute Merchant, and how the Sheriff was commanded to deliver the lands of the obligor, &c., and returned thus,—that he sent to the bailiff of the liberty, who answered him that he made no execution because the lands were Ancient Demesne, which the obligor held jointly with his wife;—and (said *Thorpe*) we pray, for the tenant, that no execution out of this Court be made thereof.—*Stouford*. We pray that the bailiff be amerced, and we pray an *Alias* writ, because neither Ancient Demesne nor joint-tenancy is an answer in law to the writ.—HILLARY. Yes it is; and if you do not testify that the land is frank fee, and that the obligor is sole tenant, we will do nothing in the matter.—*Stouford*. It is frank fee; and the obligor held it as sole tenant on the day on which the recognisance was made; and we pray an *Alias* writ.—And he had it by *Testatum est*.

Statute Merchant. § On a Statute Merchant the first writ to take the body was returned *Non est inventus*; therefore a writ issued to deliver the lands. The return to this was that the obligor never had anything, since the making of the recognisance, except lands of Ancient Demesne, which he held jointly with B.—*Quære* whether he shall have execution.—Afterwards the plaintiff testified that the lands were frank fee, and that the obligor was seised solely. And the plaintiff had another writ on his testification, &c.

## No. 48.

a ses heirs, sil ne comence en lui mesme, et ceo par A.D. 1341. reversion salve. Par quei il treit la fyne qe N. conust les tenementz, &c., estre le droit H. come ses, &c., pur cele reconisance le baroun et sa femme rendent a N. a sa vie, rendant a baroun et sa femme un ros pur lour vies, et, si N. survyve le baroun et sa femme, rendant as heirs le baroun vint livres par an. Et fust receu.

(48.)<sup>1</sup> § *Thorpe* rehercea coment un suyst execucion hors dun statut marchant, et coment comande fust al Vicounte de liverer ses terres, &c., le quel ad retourne issi, qil manda au baillif du fraunchise, qe lui respondi qil fist nul execucion pur ceo qe les terres sount ancienne demene, qil tient joynt od sa femme, et nous prioms, pur le tenant, qe nule execucion hors de ceste Court y face.—*Stouf.* Nous prioms qe le baillif soit amercie, et prioms *Sicut alias*, qar ancienne demene ne joyntenance ne chiet mye en respons de ley.—*HILL.* Si fait; et si vous ne tesmoignez qe cest soit frank fee, et qil soit soul tenant, nous ent ferroms rien.—*Stouf.* Cest frank fee; il le tient soul jour de la reconisance fait, et prioms *Sicut alias*.—*Et habuit per testatum est.*

Retourne  
dun Vi-  
counte.  
[Fitz.  
Retourne  
del Vi-  
count,  
109.]

§ En<sup>2</sup> estatut marchant le primer bref a prendre le corps fuit retourne qil ne fuit pas trove; par quei le bref issit a delyverer les terres. Retourne fuit qil navoit unques rien, pus la reconisance, fors terres dancienne demene, quex il tynt joynt ove R.—*Quere* sil avera execucion.—Pus le pleyntif testmoigna qe les terres furent franc fee, et qil fut sole seisi. Et avoit autre bref sour sa testimoignance, &c.

Statut  
Marchant.  
[Fitz.  
Execucion,  
62.]

<sup>1</sup> From T. alone, as far as the point at which the larger type ends.

<sup>2</sup> This report of the case is from L. alone.



## No. 49.

A.D. 1841.  
Debt.

(49.) § Debt on an obligation, which J. son of N. Langton brought against Richard Saweshulle, where an indenture was produced, which purported that, if the defendant should ratify whatever should be done by his proctors, &c., with regard to the vicarage of Burton Agnes, the obligation should be void. And the defendant said that he did ratify according to the terms of the indenture; judgment whether an action, &c.—*Pole*. He does not allege any certain thing which could be ratified; judgment.—*Thorpe*. Whatever was done was ratified, and he did it; wherefore I have fulfilled the words in the indenture, and that is sufficient.—*Pole*. When the indenture was made, it spoke of a time then to come, that something to be done should be ratified; wherefore you must show some particular thing to have been put in operation which could be ratified; for if nothing was done, nothing was ratified.—*HILLARY*. If nothing was done, &c., then you employ this action in vain; and if anything was done which is not ratified, you shall state it.—*Pole*. He did not ratify; ready, &c.—*HILLARY*. This issue you shall not have, if you do not state in particular some act which he did not ratify.—Therefore *Pole* alleged a certain act begun by the proctors which he did not ratify; ready, &c.

Debt.

§ On a writ of Debt an obligation was produced, and a deed by which the plaintiff granted that, if the defendant should ratify, within a certain time, whatever should be done by his proctors in a business touching the vicarage of T., the obligation should then be void, &c. And the defendant said that he did ratify, as was expressed in the deed, and that the ratification was published in the Consistory Court in which the plea was pending; judgment whether an action, &c.—*Gaynesford*. State with certainty what was ratified.—*Thorpe*. We have fulfilled the condition of the deed.—*Gaynesford*. You did not ratify everything that was done.—*HILLARY*. State then what was done which was not ratified.—And *Gaynesford* did so, and the issue was received.

## No. 49.

(49.)<sup>1</sup> § Dette par obligation, qe J. fitz de N. Langtone porta vers Richard Saweshulle, ou ententure fust mys avant, qe voleit qe si le defendant ratifiast quant qe fust fait par ses procuratours, &c., en droit de la vicarie de Burtone Augneys, qe lobligacion serreit nule. Et dit qil ratifia solonc ceo qe lententure voet; jugement si accion.—*Pole*. Il allege nul certaine chose qe purreit estre ratifie; jugement.—*Thorpe*. Quant qe fust fait si fust ratifie, el il fist; par quei jay serve les paroles en lendenture, et ceo suffist.—*Pole*. Quant lendenture fust fait, il parla de temps a venir adonques, qe la chose qe serreit a faire serreit ratifie; par quei vous covient moustrer ascune certaine chose estre mys en oeure qe purreit estre ratifie; qar si rien fust fait, rien fust ratifie.—*HILL*. Si rien fust fait, &c., donques usez en veyn ceste accion; et si ascune chose fust fait qe nest mye ratifie, vous la dirrez.—*Pole*. Il ne ratifia pas; prest, &c.—*HILL*. Cest issue naverez pas, si vous ne dies en certain aucun fet quel il ne ratifia pas.—Par quei *Pole* allegea certain fait comence par les procuratours qil ne ratifia pas; prest, &c.

A.D. 1341.  
Dette.

§ En<sup>2</sup> un bref de dette obligation fut mys avant, et fait par Dette. quel le pleintif granta si le defendant ratefiast, deinz certain temps, qant qe serroit fait par sez procuratours en un bosoigne de la vicarie de T., qe adonques le obligation serra voide, &c. Et dit qil ratefa, qant qe fut dite, quel ratificacioun fuit puplie en consistorie ou le plee fut pendant; jugement si accion, &c.—*Gayn*. Mettez en certain quei fuit ratifie.—*Thorpe*. Nous avoms servy le fait.—*Gayn*. Vous ne ratifiastes pas qant qe fut fait.—*HILL*. Ditez donques quei fuit fait qe ne fuit pas ratifie.—*Et sic fecit*, et lissue fut resceu, &c.

<sup>1</sup> From T. alone, as far as the point at which the larger type ends.

<sup>2</sup> This report of the case is from L. alone.

## No. 50.

A.D. 1341.  
Entry ad  
terminum  
qui præ-  
terit.

(50.) § *Ad terminum qui præterit*, in respect of rent, against a man and his wife, who answered as tenant of the soil.—*Thorpe* pleaded "Out of the demandant's fee."—*Blaik*. We have counted of the seisin of our ancestor as of fee and of right, and that is a sufficient title. And upon this he did not dare to abide judgment; wherefore he produced a specialty, and showed that one A. was seised of the rent through the hand of one B., his tenant, and granted to the demandant's ancestor M., and M.'s heirs, &c., and that M. was seised by virtue of the grant, and that from M. it descended, &c., to the demandant, &c.—And the deed was read, and it purported that A. granted the rent, &c., as above, and wardship, and escheat, and all other profits which could fall in after the death of the tenant, to M., his heirs or assigns, to hold of A. and his heirs by the fifth part of a knight's fee.—*Thorpe*. State with certainty whether he shows this deed to prove rent service, and so to be at issue that the matter in demand is within his fee, or puts the deed in evidence in order to make himself a title as in respect of rent charge.—And he was put to this.—Therefore *Blaik* employed it in proof of rent seck.—*Thorpe*. Then you see clearly how the deed which he produces as a title to rent seck proves in itself that the rent is rent service; for although the fee and seignory pass, it is to hold of the grantor by knight-service, so it makes him mesne between the lord paramount and the tenant; judgment whether he ought to be answered.—*Blaik*. A. did not grant service, or fee, or seignory, wherefore these things remained; besides, if the seignory passed, it may still be that we have released it, and so the rent remains.—*Thorpe*. If you released, all is gone, unless the rent was specially reserved, and that you do not show.—PARNING. He

## No. 50.

(50.)<sup>1</sup> § *Ad terminum qui præterit* de rente, vers A.D. 1341.  
 un homme et sa femme, qe respondirent come tenant Entre ad terminum qui præterit.  
 du soil.—*Thorpe* dit qe hors del fee del demandant.—  
*Blayk*. Nous avoms conte de la seisine nostre auncestre  
 come de fee et de dreit, quel est tite suffisante. Et  
 sur ceo il nosa mye demorer ; par quei il moustra  
 avant especialte, et moustra qun A. fust seisi de la  
 rente par mye la mayne une B., son tenant, le quel  
 granta a M. auncestre le demandant, et a ses heirs,  
 &c., et il seisi par la grant, de lui descendi, &c., a lui,  
 &c.—Et le fet fust lieu, et voleit qe A. granta la rente,  
 &c., *ut supra*, et garde, et eschete, et touz autres pro-  
 fitz qe purreynt eschere apres la mort del tenant,  
 [a M.] ses heirs ou assignez, a tenir de lui et ses heirs  
 par la quinte partie dun fee de chivaler.—*Thorpe*.  
 Mettes en certain le quel il moustre cest fet pur prover  
 rente service, et issint estre a issue qe deinz son fee,  
 ou<sup>2</sup> mette<sup>3</sup> le fet en evidence de lui faire tite come  
 de rente charge.—Et a cest fust il mys.—Par quei,  
*Blayk* lusa come en prove de rente sek.—*Thorpe*.  
 Donques vous veetz bien coment le fet qil mette  
 avant pur tite de rente sek prove en lui mesme qe  
 cest rente service ; qar tout passe fee et seignurie, et  
 a tenir de grantour par service de chivaler, issint lui  
 fait il mene par entre le seignur paramont et lui ;  
 jugement sil deive estre respondu.—*Blayk*. Il ne  
 granta ne service, ne fee, ne seignurie, par quei ceo  
 demora ; ovesqe ceo, si la seignurie passa, uncore poet  
 estre qe nous lavoms relese, et si demoert la rente.—  
*Thorpe*. Tout est ale, si vous releassastes, si la rente  
 ne fust pas especialment reserve, et ceo ne moustrez

<sup>1</sup> From T. alone, as far as the point at which the larger type ends.

<sup>2</sup> T., et.

<sup>3</sup> T., mettre.

## No. 50.

A.D. 1341. has said that the tenant held of the person who granted to his ancestor by homage, fealty, and escuage, and there is no word in the deed by which escuage was to pass; and if escuage remained to him the seignory remained; besides, your plea was to no other intent than to compel him to make answer for himself; now by your own proof, proving his demand to be rent service, you make him entitled to an answer of common right; and even if this were rent seck or rent charge, yet since he demands on the seisin of his ancestor, who leased all without specialty, he should be answered; for when a man's action arises from a lease or a deed made by his ancestor in tail or for life, the case is different from that where the charge or the action commenced by the deed of the tenant.—*Thorpe*. I think it is all one as to the point of being answered; but we are past that, for he has expressly put forward a specialty in proof of rent seck, and by such title he has made his claim; and if his deed by which he aids himself should prove a different rent rather than the kind of rent supposed, that disproves his title and his claim; judgment whether he shall be answered.—*Blaik*. Then do you admit that it is rent service?—*Thorpe*. No; I am a stranger to the deed, and perchance it is void; but, if rent vested by that deed, it would be rent service.—*HILLARY*. How should he have relief or escheat if not by reason of seignory?—*Blaik*. This I say, that he would not have an action for either except by way of covenant against his grantor.—*BASSET*. *Ex nudo pacto non oritur actio*.—And they were adjourned.

Entry ad  
terminum  
qui præ-  
terit.

§ Marmaduke de Lunlay brought a writ of Entry *ad terminum qui præterit* against A., and B., A's wife, and demanded certain rent by virtue of the seisin of his ancestor.—*Thorpe*. A. and B. tell you that they are tenant of the tenements whereof you demand the rent, and say that these tenements are out of the demandant's fee, &c.—*Blaik*. We have title ancestral in our writ, and you do not deny the lease.—But he

No. 50.

pas.—PARN. Il ad dit qe le tenant tient de lui qe A.D. 1341. granta a son auncestre par homage, feaute, et escuage, et il ad nule parol en le fet par quel escuage duist passer; et si escuage lui demorast la seignurie demora; ovesqe ceo, vostre dit ne fust mye a autre entente mes de lui chaser de soi faire respons; ore par vostre prove demene, qe vous provez sa demande estre rente service, vous lui facez de comune droit responsable; et tout fust ceo rente sek ou charge, la ou il demande de la seisine son auncestre, qe lessa tout sanz especialte, il serreit respondu; qar il est autre quant saccion sourde dun lees ou dun fet par son auncestre en taille ou terme de vie, qe si la charge ou laccion comenceast par fet du tenant.—*Thorpe*. Jeo quide tout estre un quant a point destre respondu; mes nous sumes passe cella, qar expressement il ad mys avant especialte en prove de rente sek, et par tiel title ad fait son cleyme; et si son fet par quel il seide provereit pluis toust autre rente qe tiel manere de rente, ceo desprove son title et son cleyme; jugement sil serra respondu.—*Blayk*. Donques conises vous qe cest rente service? —*Thorpe*. Nanyl; jeo suy estrange al fait, et par cas il est voide; mes, si rente vesty par ceo fet, ceo serreit rente service.—*HILL*. Coment avereit il relief ou eschete si noun par seignurie?—*Blayk*. Ceo die jeo, qil navereit pas accion de lun ne de lautre mes par voie de covenant vers son grantour.—*BASS*. *Ex nudo pacto non oritur actio*.—*Et adjournantur*.

§ Marmeduke<sup>1</sup> de Lunlay porta bref dentre *ad terminum qui præterit* vers A., and B., sa femme, et demanda certaine rente de lasseisine soun auncestre.—*Thorpe*. A. et B. vous diount qils sount tenant de tenements dount vous demandez le rente, et diount qe ceux tenements sunt hors de soun fee, &c.—*Blayk*. Nous avoms title auncestrel en nostre bref, et vous ne

Entre ad terminum qui præterit.  
[Fitz.  
*Hors de son Fee*, 28.]

<sup>1</sup> This report of the case is from L. alone.

## No. 51.

A.D. 1341. did not dare to abide judgment, and said that one L. heretofore held these tenements of one M. by homage, and fealty, and escuage, and six marks of rent, and alleged seisin, and (said he) M. granted the six marks of rent to T. our ancestor and his heirs by this deed, and they were seised, &c. And *Blak* showed a deed which testified grant of the six marks of rent, with wardships, reliefs, and escheats, and all other profits which could fall in through the death of the tenant.—*Thorpe*. Put it with certainty whether you claim this as rent service or as rent charge.—*Blak*. Be it one or the other, I have shown my title to the Court; adjudge it to be such as it is.—Nevertheless he was compelled to claim it with certainty, and he claimed it as rent seck.—*Thorpe*. The deed is contrary to your claim, unless you show some special matter to the effect that this can be rent seck, &c.

Darrein  
Present-  
ment.

(51.) § Darrein presentment was sued against John Molyns. The King sent his writ, in which it was stated that for a certain reason he had caused to be seized all the lands, fees, and advowsons of the said John into his hand, and therefore he commanded the Justices that, as to that suit, they should do nothing without consulting him.—*Pole*. John, against whom the writ is brought, makes default; we pray process on the Statute.<sup>1</sup>—*HILLARY*. We can not grant that, but we will give a day over.—*Pole*. We can not have that, for the party is not in Court.—*HILLARY*. Then we can do nothing but let the matter alone.—*Thorpe*. The plaintiff can not have

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<sup>1</sup> 52 Hen. III. (Stat. Marl.) c. 12.

No. 51.

dedites pas le lees.—Mes il nosa pas demorer, et dit qun L. A.D. 1341. jadis tient ses tenements dun M. par homage, et fealte, et escuage, et vj. mars de rente, et lia seisine, le quel granta par ceo fait les mars de rente a T. nostre auncestre et a ses heirs, et ils seisi, &c.; et moustra fait qe testmoigna grant de lees vj. mars de rente, ove gardez, releves, et eschetes, et touz autres qe poient eschere par mort dez tenante.—*Thorpe*. Mettez en certain le quel vous clamez ceo rente service ou come rente charge.—*Blayk*. Soit il un ou aultre, ja moustre moun title a le Court; le ajugges pur tiel com il est.—*Tamen* il fuit chace de le clamer en certain, et le clama com rente sek.—*Thorpe*. Le fait est contrarie a vostre cleyme, si vous ne moustrez pas asqun especial materie en cest qe ceo put estre rent sek, &c.

(51.)<sup>1</sup> § Darein presentement fust suy vers Johan Derein  
Presente-  
ment. Molyns. Le Roi manda son bref, compernant coment par certain cause il ad fait seisir touz les terres, fees, et avowesons le dit Johan en sa mayne, par quei comanda as Justices, qen droit de ceste suyte, lui nient conseil, qil ne fissent rien.—*Pole*. Johan, vers qi le bref est porte, fait defaute; nous prioms proces sur Statut.—*HILL*. Ceo ne poms pas, mes nous durrons jour outre.—*Pole*. Ceo ne poms, qar la partie nest pas en Court.—*HILL*. Donques ne poms rien faire mes le soeffre en pees.—*Thorpe*. Le pleintif poet avoir

<sup>1</sup> From T. alone, until otherwise stated. The record of this case is among the *Placita de Banco*, Trin., 15 Edw. III., R<sup>o</sup>. 352. It there appears that the assise was brought by Ella late wife of William le Botiller of Wem against John de Molyns in respect of the church of Weston Turville (Bucks). Ella alleged that her late husband William and she presented, in her right, a clerk who was admitted and instituted, and that her previous husband, Walter de Hopton, and she presented in her right a clerk who was admitted and insti-

tuted. The King sent a writ close to the Justices, acquainting them that he had caused all lands, tenements, advowsons, &c. of John de Molyns to be seized into his hand, and commanding them not to proceed further with the assise "nobis "inconsultis"; also another writ mentioning the persons commissioned to take the lands, &c.; also a third writ reciting Ella's complaint of delay, and directing the Justices to proceed, but by no means to give judgment "nobis "inconsultis." John then said that Ella ought not to be answered



## No. 51.

A.D. 1341. any suit except bill [of Petition] to the King.—

HILLARY. We shall stay proceedings; still sue, if you will, [a writ] that we proceed.—*Pole*. We pray process at a day over; for the King has not commanded you to stay proceedings otherwise than until he be consulted; and since according to law, in this case, he is not a party by aid-prayer, or any other process, we pray you to proceed.—*Thorpe*. The King is tenant of the advowson, and that you have of record; wherefore, although John Molyns would by consent make default, still, if this fact were shown, you would stay proceedings without a writ, in order to save the estate of the King; and even though there be in the writ informal words, viz. *nobis incon-sultis*, the rest of the writ is sufficient for the King's purpose.—And afterwards there came a writ to proceed according to law, &c.—*Thorpe*. By virtue of that writ you can not proceed, for it would be contrary to law to take an assise when the writ is abated. And when the King is seised there is no remedy or recovery by law except by petition; and this writ was granted in a very strange way.—*Pole*. John Molyns makes default.—*Thorpe*. He does not; he is here by attorney.—And his warrant of attorney was general "in all pleas," and was to last for a certain time which was

as to her writ, and pleaded that the church "plena est et consulta de  
" quodam Johanne de la Haye, ad  
" presentationem ipsius Johannis  
" de Molyns et Egidie uxoris  
" sue et cujusdam Johannis filii  
" eorundem Johannis de Molyns  
" et Egidie, et fuit per dies  
" et annos ante diem impetra-  
" tionis brevis sui" (30 Sept.  
8 E. 3). Ella replied that by  
allegation of plenarty before the  
date of her writ he ought not

"cassare breve suum," because  
Botiller's and her presentee, Wil-  
liam Hereward, died parson im-  
parsonce of the church on a day  
named, whereby the church be-  
came vacant, and Botiller and she  
brought a writ of Assise of Dar-  
rein Presentment against John de  
Molyns, dated 26 Feb., 8 Edw. 3.,  
and process was continued thereon  
until Botiller died, whereby it was  
"in jure cassatum" . . . "per  
" quod ipsa Ela statim post mor-

## No. 51.

nule suyte forsque bille vers le Roi.—HILL. Nous A.D. 1341. surserroms; uncore suez, si vous voillez, qe nous aloms avant.—*Pole.* Nous prioms proces a jour outre; qar le Roi ne vous ad mande de sursere autrement mes sil serreit conseil; et par ley, en ceo cas, del houre qe par eide priere, nautre proces, il est a nule regarde partie, ne poet estre, nous prioms que vous ales avant.—*Thorpe.* Le Roi est tenant del avoweson, et ceo avez de record; par quei, tout voleit Johan Molyns par assent faire defaute, uncore sanz bref, si la chose fust moustre, vous surserrez, pur salver lestat le Roi; et tout eit en le bref parole nient formele, saver *nobis inconsultis*,<sup>1</sup> le remenant du bref sert pur le Roi.—Et puis vient bref daler avant *secundum legem, &c.*—*Thorpe.* Par cel bref ne poez aler avant, qar ceo serreit contre ley de prendre assise quant le bref est abatu. Et qant le Roi est seisi il ny ad nul remedie ne recoverir par ley fors par petition; et ceo bref fust grante merveillosement.—*Pole.* Johan Molyns fait default.—*Thorpe.* [Fits. Noun fait; il est par attourne.—Et son garrant fust Attourne, 70.] general en toutz pleez, a durrer par certain temps qest

"tem ejusdem Willelmi per dietas  
"executas, &c., tulit istud breve"  
(returnable at the Quinzaine of  
St. Michael, 8 Edw. III.). John  
said the church was full, &c., of  
J. de la Haye before the purchase  
of the first writ. And because this  
matter pertained "ad forum eccle-  
"siasticum, mandatum est custodi  
"Spiritualitatis Episcopatus Lin-  
"colnise" to enquire and certify.  
He certified that the church was

full of J. de la Haye, who was  
admitted and instituted "nono  
"Kaln. Febr.," A.D. 1333-4.  
Ella prayed judgment "in prin-  
"cipali, et assisam de damnia."  
The King sent a writ to proceed,  
notwithstanding his previous writ.  
Ella had judgment to recover her  
presentation, and a writ to the  
Guardian of the Spiritualities to  
admit, and the assise as to damages.

<sup>1</sup> T., ne const.

## No. 51.

A.D. 1341. *past.*—*Pole*. Now is the time past, and therefore he is without warrant.—*Thorpe*. What you say is contrary to law, for he who is once attorney is attorney throughout the plea unless he be removed.—To this the COURT agreed.—They were adjourned.—Afterwards, in Trinity term, HILLARY said, You must speak for the party; and, as to the King, he has commanded us by writ and told us verbally to proceed.—*Thorpe*. We tell you that one R. was seised of the manor to which the advowson is appendant, and by this deed enfeoffed John Molyns and E. his wife, and J. their son, of the manor with the appurtenances, to hold to them and to the heirs of John; so he holds the advowson jointly with the others; and afterwards this same R. released by fine in this Court, as above; judgment of the writ.—*Pole*. We have brought the writ against him as a disturber, and suppose him to be in possession of the advowson; and the deed which he produces regarding the manor does not prove a joint-tenancy of the advowson; judgment, and we pray the assise.—*Thorpe*. The writ purports that we deforce him of the advowson; and we could plead in bar the deed of an ancestor or of himself, as to the advowson, if the others were named, and this we can not now do; wherefore, &c.—HILLARY. I well know that the writ will abate if the joint-tenancy be found by verdict; but your deed does not suppose a joint-tenancy of the advowson, nor shall others be warned by reason of this deed.—And afterwards, HILLARY, having changed his opinion, said that he had spoken to the Council, and (said he) We are agreed that the exception of joint-tenancy does not lie upon this writ; wherefore, by judgment, answer.—*Thorpe* alleged plenarty, by their own patronage, for years and days before the purchase of the writ.—*Pole*. We do not admit that the church was vacant for

## No. 51.

passe.—*Pole*. Or est le temps passe, par quei il est A.D. 1341.  
 sanz garrant.—*Thorpe*. Vous parles contre ley, qar  
 celui qest attourne a un temps est attourne pur tout  
 le plee sil ne soit remue.—*Ad quod CURIA consensit*.  
 —*Adjournantur*.—*Postea, termino Trinitatis*, HILL. Il  
 covient qe vous parles par la partie; et, qant al Roi, il  
 nous ad mande par bref et par sa bouche nous dit qe  
 nous ailloms avant.—*Thorpe*. Nous vous dioms qun  
 R. fust seisi del manoir a qi lavoessoun est apendant,  
 et feffa Johan Molyns et E.<sup>1</sup> sa femme, et J.<sup>2</sup> lour fitz,  
 par ceo fet del manoir ove les apurtenantz, a tenir a  
 eux et as heirs Johan; issint tient il lavoessoun joynt  
 ove les autres; et puis mesme celui R. relessa par  
 fyne ceinz, *ut supra*; jugement du bref.—*Pole*. Nous  
 avoms porte bref vers lui come destourbour, et sup-  
 posoms mesme estre possesseur del avowere, et ceo  
 qil mette avant fait du manoir ne prove pas joynt-  
 tenance del avoessoun; jugement, et prioms lassise.—  
*Thorpe*. Le bref voet qe nous lui deforceoms lavo-  
 essoun; et par fet dauncestre ou de lui mesme nous  
 poms pleder en barre de lavoessoun si les autres fuis-  
 sent nomes, et ceo ne poms mye ore; par quei, &c.  
 —HILL. Jeo say bien qe le bref abatera si la  
 joyntenance soit trove par verdit, mes vostre fet ne  
 suppose pas joyntenance del avowere, nautres ne ser-  
 roint mye garnez par ceo fet.—Et puis HILL, *mutata* [Fitz.  
*opinione*, dit qil avoit parle au Conseil, et sumes dun Jointen-  
 assent qe excepcion de joyntenance ne gist mye en auncy, 12.]  
 ceo bref; par quei, par agarde, responez.—*Thorpe* alegea  
 plenerte, de lour avowere demene, anz et jours avant  
 le bref purchase.—*Pole*. Nous ne conisoms pas qele

<sup>1</sup> T., A.<sup>2</sup> T., W.

## No. 51.

A.D. 1341. years and days, for the exception is made only to this intent, that the church was full for six months before the purchase of the writ.—To this the COURT agreed.—And (continued *Pole*) we tell you that W. our husband and we heretofore brought a writ of *Quare impedit* against him, which writ was purchased within six months after the vacancy occurring through the death of our last presentee, and that writ abated by the death of our husband, and freshly after the death of our husband we brought this writ, so the suit is continued as far as lies in us; judgment whether on the ground stated you can abate our writ. And *Pole* gave the particulars of the purchase of the first writ, the death of the parson, and the death of the husband.—And note that in the opinion of the COURT the writ in this case is good, notwithstanding the plenarty before this writ was purchased, &c.—*Thorpe*. We tell you that the church was full for six months and more before the first writ was purchased; ready, &c., whenever we ought to aver it.—*Pole* said the contrary.—A writ issued to the Bishop to certify on three points, viz., for how long the church had been full, and of whom, and on whose presentation.—Afterwards the Bishop certified that the church was full for only 30 days before the writ was purchased. Therefore the plaintiff had a writ to the Bishop, &c.

Assise of  
Darrein  
Present-  
ment.

§ Ella, late wife of W. Boteler, brought assise of Darrein Presentment against J. Molyns.—John, by attorney, said that his lands, fees, and advowsons were in the King's hand, and so also it was said on behalf of the King.—And one showed a commission whereby the King had seized J.'s lands for rebellion, and had given him the custody, for which reason the Justices stayed proceedings.—Afterwards there came a writ to the Justices to the effect that, if it

## No. 51.

fust voide aunz et jours, qar l'excepcion nest pas A.D. 1341. fait<sup>1</sup> mes a cele ententé qele fust pleyne pur vj. mois avant le bref purchace.—*Ad quod CURIA consensit.*—Et vous dioms qe W. nostre baroun et nous portames autrefoitz bref de *Quare impedit* vers lui, quele bref fust purchace deinz les vj. moys apres la voidance par la mort nostre darein presente, quel bref abatist par la mort nostre baroun, et frechement apres la mort nostre baroun nous portasmes ceo bref, issi la suyte continue en quant qen nous est; jugement si par tant puissez nostre bref abatre. Et myst en certain le purchas de primer bref, la mort la persone, et la mort le baroun.—*Et nota* qe par oppinion de COURT ceo bref en le cas est bon, *non obstante* la plenerte avant cestui bref purchace, &c.—*Thorpe.* Nous vous dioms qele fust pleyne pur vj. mois et plus avant le primer bref purchace; prest, &c., ou averer le devoms.—*Pole. Et contra.*—Bref issit al Evesqe qe certifiera de iij. pointz, de come bien de temps ele ad este pleine, et de qi, et a qi presentement.—Puis levesqe certifia qe leglise fust pleyne forsque par xxx. jours avant le bref purchace; par quei pleintif avoit bref al Evesqe, &c.

§ Eleyne,<sup>2</sup> qe fuit la femme W. Boteler, porta lassise [de] dreyn presentement vers J. Molyna.—J., par atourne, dit qe cez terre, feez, et avowesons furent en la mayn le Roy, et auxi fuit dit pur le Roy.—Et un moustra comission qe le Roy avoit seisi les terres J. pur rebealte, et luy avoit balle la garde, par quei les Justices soursistrent.—Puis vynt bref as Justices *quod*

Assisa  
Ultima  
Presenta-  
tionis.

<sup>1</sup> T., default. The words de effect are interlined in a later hand.

<sup>2</sup> This report of the case is from L. alone, in which MS. it appears

as of the Trinity Term next following. The name of W. Boteler's wife was Ella, as appears by the record.

## No. 52.

A.D. 1341. could be established to their satisfaction that the plea was commenced against J. before the seizure by the King, they should proceed with the plea.—*Stouford*. Not that they should proceed to final judgment.—Therefore, because it was found of record that the plea was commenced before the seizure by the King, the Justices put the parties to answer.—*Thorpe* alleged joint tenancy of the advowson with the wife and the son by deed.—*HILLARY*. This writ lies against disturbers as does a *Quare impedit*; wherefore answer.—And this was said with the assent of all the Justices of the different Courts.—*Thorpe* alleged plenarty years and days before the writ was brought, and stated the full particulars.—*Pole*. The church became vacant on such a day, and within the period of six months afterwards our husband and we brought a writ of Darrein Presentment, which was pending until our husband died, and on such a day afterwards, by Journeys Accounts, we brought this writ; judgment whether by this exception you can abate our writ.—Therefore he made his exception as to a time before the first writ; and they were at issue on the plenarty, &c.

*Quare  
impedit.*

(52.) § *Quare impedit* against the Prior of Pembroke, and against the parson of the church by another writ,

## No. 52.

*si eis constare poterit* qe la plee fuit comence vers A.D. 1341. J. avant la seisi le Roy, qils alassent avant en le plee.—*Stouf.* Qils nalassent pas a final jugement.—Par quei, pur ceo qe le record fuit trove plee comence devant la seisi le Roy, les Justices mystrent les parties a respondre.—*Thorpe* aleggea joyntenance del avoweson al femme et le fitz par fait.—*HILL.* Ceo bref gist vers destourbours com fait *Quare impedit*; par quei responez.—Et ceo fuit par assent des touz les Justices de divers places.—*Thorpe* aleggea plenerte aunz et jours avant ceo bref porte, et dit tot en certain.—*Pole.* Leglise se voida tiel jour, et deinz le temps de vj. moys apres nostre baron et nous portassames bref de dreyn presentement, quel pend tanqe nostre baron morust, et tiel jour apres, par journes acompts, nous portames ceo bref; jugement si par cele excepcion pussez ceo bref abatre.—Par quei il myst le excepcion de temps avant le primer bref; et furent a issue sour la plenerte, &c.

[Fitz.  
Jointen-  
auncy, 10.][Fitz.  
Journes  
Accomptes,  
14.]

(52.)<sup>1</sup> § *Quare impedit* vers le Priour de Penbroke, et la persone del eglise [par] un autre bref, mes il nest

*Quare  
impedit.*

<sup>1</sup> From T. alone, as far as the point at which the larger type ends, but corrected by the records, *Placita de Banco*, Easter, 15 Ed. III. R<sup>o</sup>. 289 and R<sup>o</sup>. 289 d. In the one it appears that a writ was brought by the King against the Prior of Pembroke, in the other that a writ was brought against Henry de Walton "clericus," in respect of the church of "Maynorbir" (Manorbier). The following is an abridgment of the first. It was alleged in the writ that the church "vacat et ad Regis spectat" "donationem ratione temporalium" "Prioratus prædicti in manu ipsius" "Regis, occasione guerræ inter

"ipsum Regem et illos de Francia" "motæ, existentium." The count for the King was that John Savage, the Prior's predecessor, was seised of the advowson as in right of his church of Saint Nicholas, Pembroke, temp. Ed. I., and presented, &c., that on the death of his presentee the church was vacant, that the King had seized the temporalities as above, and that so it belonged to him to present. The Prior pleaded that the church "non fuit" "vacans" at the time at which the King seized the temporalities, or at any time since, and tendered an averment to that effect. The replication for the King was



## No. 52.

A.D. 1341. but he was not described as parson, but as Henry de Walton, clerk.—*Pole* denied tort and force, and said that the Court ought not to take cognisance of the matter, because the church is in the county of Pembroke, which is in Wales, where no writ of the King's runs, and the writ is directed to the Sheriff of Hereford.—*Thorpe*. His exception applies to a matter of fact and is enquirable, and he has not denied the damages; judgment, and we pray a writ to the Bishop.—*Pole* defended, and pleaded as to the parson and said, He is parson imparsoned without this he has made any other disturbance; judgment whether the writ lies against him. And as to the Prior, the words of the writ are, "Command the Prior of Pembroke, &c.," and subsequent words of the writ are, "by reason of the temporalities of the Priory aforesaid," and the Priory is not previously named; judgment of the writ.—*Thorpe*. There can not be a Prior without a Priory, &c.—*HILLARY*. The writ is good enough.—*Pole*. The church did not become vacant while the temporalities were in the King's hand; ready, &c.—*Thorpe*. You shall not be admitted to that averment; for by matter of record in the Chancery we will aver that the tempo-

## No. 52.

pas nome persone, mes Henre de Walton,<sup>1</sup> clerc.—*Pole* A.D. 1341. defendi tort et force, et dit qe la Court ne deit conus-tre, qar leglise est en le counte de Penbroke, qest en Galeschere, ou nul bref le Roi court, et le bref est direct al Vicounte de Herford.—*Thorpe*. Son chalenge chiet en fait et est enquerable, et il nad mye defendu les damages; jugement, et prioms bref al Evesqe.—*Pole* defendy, et dit qant a la persone, et dit qil est persone enpersone saunz ceo qautre destourbanche eit fait; jugement si bref vers lui y gise. Et quant al Priour, le bref voet *Præcipe Priori Penbrochie, &c.*, et puis le bref voet *ratione temporalium Prioratus prædicti*; la<sup>2</sup> Priorie nest pas nome devant; jugement du bref.—*Thorpe*. Priour ne poet estre saunz Priorie, &c.—*HILL*. Le bref est assetz bon.—*Pole*. Leglise ne se voida pas, esteant les temporaltes en la mayn le Roi; prest, &c.—*Thorpe*. Al averement ne serrez resceu; qar par chose de record en Chauncellerie nous

"quod idem dominus Rex, per  
"assensum totius Concilii sui,  
"primo die Julii anno regni sui  
"undecimo, ordinavit quod omnia  
"terræ et tenementa, feoda, et  
"advocationes, et omnes posses-  
"siones quorumcunque virorum  
"religiosorum alienigenarum de  
"potestate Regis Franciæ seisir-  
"entur in manum suam occasione  
"guerræ inter ipsum Regem et  
"illos de Francia motæ. Et pro-  
"fert hic literas ipsius domini  
"Regis patentes quæ prædictam  
"ordinationem testantur, &c."  
The possessions of the Priory were seized by virtue of this ordinance. The Bishop of the Diocese had, in return to the King's writ, certified into Chancery that the church "in-cepit vacare" on the death of the presentee above mentioned "in

"Festo Sancti Calixti Papæ, vide-  
"licet quarto decimo die Octobris  
"anno Domini Mcccxi," and so the church was vacant after the said first of July, and therefore the Prior could not be admitted to his averment. The rejoinder of the Prior was that the church was not vacant after the said first of July, and upon this issue was joined. After several adjournments the Prior failed to appear, and judgment was given for the King. In the second record also it appears that judgment was given for the King, though Walton claimed nothing except as parson im-parsonæe.

<sup>1</sup> T., J. de S., instead of Henre de Walton.

<sup>2</sup> The word *Pole* is inserted before la, in T.

## No. 52.

A.D. 1341. ralities are still in the King's hands, for the Prior is the King's farmer, and is so by lease from the King, saving to him fees and advowsons; and the Prior does not deny that the church is now vacant; judgment, &c., and we pray a writ to the Bishop.—*Pole*. An issue can not be taken on the plenarty where the King is a party; wherefore that can not be held as not denied; but the issue is on the seizing of the temporalities into the King's hand, &c., as comprised in the King's title, and that we have traversed.—*Thorpe*. And it is of record that the temporalities are in the King's hand, so there shall be no averment thereon [by the defendant], and the vacancy is now admitted.—*Pole*. The King's title ought not to be understood otherwise than on a vacancy before the writ was purchased, and as to that time we traverse it, and that is sufficient; for if the vacancy occurred since, the writ will abate, and the King will bring a new writ, and we can not by law answer to the King in any other way.—*Thorpe*. Judgment for the King whether the averment be admissible, since the issue trenches on the King's seisin and on the vacancy also, and the King's seisin is averred by matter of record, which we will cause to come for the purpose of certifying you.—*Pole*. The King's seisin is not traversed generally, but is in a manner admitted at a certain time; wherefore it need not be averred.—*Thorpe*. Then will you have the averment entirely on the vacancy? If so, ready, &c., that the church was vacant. But I say that the issue is on the time of the vacancy when the temporalities were in the King's hand, and you do not deny the vacancy now, and the possession of the King is of record; wherefore we pray a writ to the Bishop.—And they stood to judgment whether the averment was admissible.—*Pole*. Judgment of the writ brought against the clerk who is and was, on the day on which the writ was pur-

## No. 52.

voloms averer qe les temporaltes sount uncore en A.D. 1341. la mayn le Roi, qar le Priour est fermer le Roi, et si est par le lees le Roi, sauve a lui fees et avowesons; et ne dedit pas qe leglise est ore voide; jugement, &c., et prioms bref al Evesqe.—*Pole*. Sur la plenarte issu ne se poet prendre ou le Roi est partie; par quei ceo ne poet estre tenu a nient dedit; mes issu est sur la seisine des temporaltes en la mayn le Roi, &c., come le tittle le Roi compront, et ceo avoms traverse.—*Thorpe*. Et cest de record qe les temporaltes sont en la mayn le Roi, qar ceo ne serra mye avere, et la voidance est ore conue.—*Pole*. Le tittle le Roi ne deit estre entendu fors de voidance avant le bref purchace, et a cel temps nous le traversoms, et ceo suffist; qar si la v[o]idaunce soit puis, le bref abatara, et le Roi portra novel bref, et par autre voie ne poms pas ley respondre au Roi.—*Thorpe*. Jugement pur le Roi si laverement soit reseivable, del heure qe lissue trenche sur la seisine le Roi et sur la voidance auxi, et la seisine le Roi est avere par chose de record, quel nous ferroms venir de vous acerter.—*Pole*. La seisine le Roi nest mye traverse generalment, einz est conu en manere en ascun temps; par quei ceo ne bosoigne mye estre avere.—*Thorpe*. Donques volez vous laverement tout sur la voidance? Et si sic, prest, &c., qele fust voide. Mes jeo die qe lissu est sur le temps de la voidance quant les temporaltes furent en la mayn le Roi, et vous ne dedites pas la voidance a ore, et la possession le Roi est de record; par quei nous prioms bref al Evesqe.—Et sont en jugement si laverement soit reseivable.—*Pole*. Jugement du bref porte vers le clerc qest et fust persone enpersone jour du bref

## No. 53.

A.D. 1341. chased, parson imparsonnee.—*Thorpe*. We pray a writ to the Bishop.—*Pole*. You can not have it on a writ which is abatable.—*HILLARY*. If a *Quare impedit* be brought against an Ordinary who disclaims in the advowson, shall not the plaintiff have a writ to the Bishop?—*Pole*. He will have it, because the Ordinary may in that case be a disturber; but a parson can not be a disturber as to his own church, because he can not present.—*HILLARY*. We will consider.—And afterwards, as against the clerk who claimed only as parson imparsonnee, the King had a writ to the Bishop.—*Quære*, for it was said that the Bishop by force of the writ will oust the parson; and if so, *quære* what plea the parson could have in a *Quare impedit*.—And afterwards, on the question between the King and the Prior of Pembroke as to the admissibility or otherwise of the issue whether the church became vacant while the temporalities were in the King's hands or not, they were adjourned.—And it was said that any other than the King would not in such a case have a writ to the Bishop against a parson imparsonnee who did not claim any other estate.—Afterwards *Thorpe* took an issue for the King that the church was vacant while the temporalities were in the King's hands; ready, &c.—And the other side said the contrary.

*Quare  
impedit.*

§ The King brought his *Quare impedit* against the Prior of Pembroke by reason of the temporalities of the same Priory being in his hand. And the count was that the King seized the lands and advowsons of the Prior, and that he was an alien, and of the allegiance of France.—*Pole*. The church is in Wales, where the King's writ does not run.—This exception was not allowed because the King was a party.—*Pole*. The church was not vacant while the lands of the Prior were in the King's hand.—*Thorpe*. The lands are this day in the King's hand, and you do not deny that the church is now vacant.—*Pole*. My answer applies to the whole time, &c.

*Appeal.*

(53.) § A woman sued an Appeal in the King's Bench.—*Thorpe*. This writ was purchased after the

## No. 53.

purchase.—*Thorpe*. Nous prioms bref al Evesqe.— A.D. 1341.

*Pole*. Vous ne poez mye aver sur bref abatable.—

*HILL*. Si *Quare impedit* soit porte vers Ordiner qe descleyme en lavoessoun, navera le pleintif bref al Evesqe?—*Pole*. Si avera, pur ceo qil poet en ceo cas

estre destourbour; mes persone de seglise demene ne poet estre destourbour, pur ceo qil ne poet presenter.—

*HILL*. Nous aviserons.—Et puis, devers le clerc qe clama forsque come persone enpersone, le Roi avoit bref al Evesqe.—*Quære*, qar fust parle qe levesqe pur force del bref oustra la persone; et si sic, *quære* quel plee la persone avereit en *Quare impedit*.—Et puis, entre le Roi et le Priour de Penbroke, le quele leglise se voida, esteaunt les temporaltes en la mayn le Roi ou noun, le quel issu soit reseivable ou noun, *adjournantur*.—Et fust parle qautre qe le Roi navereit pas en tiel cas bref al Evesqe vers persone enpersone qautre estat ne clama.—Puis *Thorpe* prist issu pur le Roi qe leglise fust voide esteauntz les temporaltes en la mayn le Roi; prest, &c.—*Et alii e contra*.

§ Le<sup>1</sup> Roy porta son *Quare impedit* vers le Priour<sup>2</sup> de Penn. *Quare broke* par resoun des temporaltes de mesme la Priourie<sup>3</sup> en *impedit*. sa mayn esteanz. Et counta qe le Roy [seisi] les terrez [et] avowessouns le Priour,<sup>2</sup> et qil est aliene et de la legeance de France.—*Pole*. Laglise est en Galeschere, ou bref le Roy ne court pas.—*Et non allocatur eo quod* le Roy est partie.—*Pole*. Laglise ne fuit pas voide tant com les terres le Priour<sup>2</sup> furent en le mayn le Roy.—*Thorpe*. Les terres sunt huy ceo jour en la mayn le Roy, et vous ne dedites pas qe laglise est ore voide.—*Pole*. Moun respons refiert [a] tote temps, &c.

[Fits. Jurisdiction, 24.]

(53.)<sup>4</sup> § Une femme suyst un apelle en Bank le Roi. Apele.—*Thorpe*. Ceo bref fust purchase apres lan et le

<sup>1</sup> This report of the case is from L. alone.

<sup>2</sup> L., Labbe instead of le Priour.

<sup>3</sup> L., Labbeie, instead of la Priourie.

<sup>4</sup> From T. alone.

## No. 54.

A.D. 1341. year and day; judgment.—*Totle*. We commenced our suit within the year and day, and process was sued as far as the Exigent, and you by your falsity caused one who never existed *in rerum natura* to sue against us, so that we were taken, at which time, while we were in prison, we were nonsuited; judgment, since it was your fault that the first suit was not continued, whether thereby, &c.—*Thorpe*. The Court has no warrant to try what you say, for that must be tried by way of error, and was commenced in a lower Court; besides, since you have admitted that after appearance you were nonsuited, and then lost by judgment on the nonsuit, the action and the suit are given to the King.—*Pole*. If an Appeal be abated after the year by reason of defect in the writ, and by Journeys Accounts the plaintiff sue another, will it be abated?—*Thorpe*. No; the suit in that case is as it were continued; not so here.—*SCHARDEBURGH*. If a man and his wife bring an assise, and the wife eloin herself, shall the husband lose his suit by that default?—*Thorpe*. No; not if he allege the matter before judgment; but, if he wait until afterwards, he will come too late.—And afterwards she was nonsuited, &c.

Avowry. (54.) § A woman avowed, for herself and another who was named, for the reason that the grandfather of the plaintiff held of B. her husband, by fealty, &c.,

## No. 54.

jour; jugement.—*Totle*. Nous comenceames<sup>1</sup> nostre A.D. 1341. suyte deinz lan et le jour, proces suy tanqe lexicgende, et vous de vostre fauxe faites une qe unqes ne fust en *rerum natura* suyr devers nous, issint qe nous fumes pris, a quel temps nous fumes nounsuy tanqe nous fumes en prisone; jugement, del houre qe ceo fust vostre defaute qe la primere suyte ne fust continue, si par taunt, &c.—*Thorpe*. Ceo qe vous parles Court nad garrant a trier, quele chose par voie derrouer covient estre trie, et comence en place pluis bas; ovesqe ceo, quant vous avez conu qe apres aparaunce vous fustes nounsuy, puis perdistes par le jugement sur la nounsuyte, accion et la suyte done au Roi—*Pole*. Si une apelle soit abatu apres lan par default del bref, par journes acomptes le pleintif suye autre, serra il abatu?—*Thorpe*. Nanyl; le suyte est en tiel cas come continue; *non sic hic*.—*SCHARD*. Si un homme et sa femme portent une assise, et la femme soi esloigne, par le default perdra le baroun la suyte?—*Thorpe*. Nanyl, sil alege la chose avant jugement; mes, sil attent tanqe apres, il vendra trop tard.—Et puis fust nonsuy, &c.

(54.)<sup>2</sup> § Une femme avowa, pur lui mesme et une *Avowzi*. autre nome, par la resoun qe lael le pleintif tient de B. son baroun, par feaute, &c., et v. marcz par an,

<sup>1</sup> T., conisoms.

<sup>2</sup> From T. alone, as far as the point at which the larger type ends. According to the record (*Placita de Banco*, Easter, 15 Ed. III., R<sup>o</sup>. 276), the action of *Replevin* was brought by Simon de Haselholte against Adam Blake and Joan de Gatewyk. Joan for herself and Adam avows because one Simon de Haselholte, grandfather of the plaintiff, whose heir he

is, held a messuage and land in La Sele (Seal) and Southwick (Sussex) of one John de Gatewyk, formerly husband of Joan, by fealty and the services of 5 marks *per annum* and a heriot after the death of each tenant. The services descended to Katharine, Margaret, and Elizabeth, John's daughters and heirs. They assigned  $\frac{1}{3}$  part of the services to the said Joan in dower, and she was thus seized



## No. 54.

A.D. 1341. and five marks by the year, &c., of which services he was seised, &c., and after the death of her husband the seignory descended to his three daughters, and she was endowed of a third part of the services, and the father of this tenant attorned, and the plaintiff also; and because the third part of the rent which was issuing in the manner aforesaid [was in arrear, she avowed].—*Gayneford*. We tell you that the tenements, &c., are parcel of the honour of Bramber, which is holden *in capite* of the King; and one A. enfeoffed the plaintiff's grandfather in the time of the King's grandfather without the King's license, and that feoffment by right could only be to hold of the King, since the feoffment was in fee simple; and we tell you that in the time of the present King it was found, by an inquisition taken by the escheator, as above; and therefore he seized the tenements into the King's hands; and afterwards the King, by this charter, granted a pardon of the trespass to the present plaintiff, to hold of him and his heirs by the services due;

of the  $\frac{1}{3}$  by the hand of Simon de Haselholte, father of the plaintiff, and after his death by the hand of the plaintiff, as by the hands of tenants of the said tenements. She distrained for arrears of the said third part. The plaintiff pleads that the tenements were, in the time of Edward I., in the seisin of William de Brewosa (Braose), as parcel of the barony of Bramber, which was held of the King *in capite*. William enfeoffed Simon the grandfather to hold "sibi et heredibus suis, quod debet intelligi de domino Rege." Afterwards King Edward III. seized the tenements, because the feoffment was without license, but, upon fine made, grant-

ed that Simon (the plaintiff) should have the tenements back in fee to hold of the King by the accustomed services. *Profert* of Letters Patent to that effect is made, and the plaintiff prays judgment "si prædicta Johanna in prædictis tenementis, quæ sic de domino Rege tenentur in capite, supponendo dominium inde in alia persona quam in persona domini Regis, captionem prædictam justam advocare possit." Joan replies that one Simon de Haselholte, ancestor of the plaintiff was seised of the tenements in the time of Henry III., and held them of William son of John de Braose, then lord of the barony

## No. 54.

&c., des queux services il fust seisi, &c., et apres la A.D. 1341. mort son baroun la seigneurie descendi as ses trois filles, et ele fust dowe de la terce partie des services, et le pere cestui tenant sattourna, et le pleintif auxi; et pur ceo qe la terce partie de la rente est issaunt par la manere avantdite.—*Gayn.* Nous vous dioms qe les tenementz, &c., sont parcelle del honour de Brembre, qest tenu en chief du Roi; et un A. feffa lael le pleintif en temps le Roi lael saunz conge du Roi, quel feffement de dreit ne poet estre fors a tenir du Roi, del heure qe le feffement fust de fee simple; et vous dioms qen temps cestui Roi trove fust, par enquest pris par leschetour, *ut supra*; par quei il seisist les tenementz en la mayn le Roi; et puis le Roi, par ceste chartre, pardona le trespas a cestui qest pleintif, a tenir de lui et ses heirs par les services dues; juge-

of Bramber, as parcel of the same barony, by fealty and the services of 5 marks *per annum* and a heriot after the death of each tenant. William, before the year 30 Henry III., granted the services to one Atte Garston and Clarice his wife "et eorum heredibus et assignatis, tenenda de ipso Willelmo et heredibus suis per servitium unius denarii ad Festum Sancti Michaelis Archangeli annuatim solvendi ad claustrum parci ipsius Willelmi de la Knappe," and they were seised of the services by the hand of the said Simon the ancestor. Atte Garston survived his wife, and from him the services descended to his son and heir Adam, and from Adam to Adam's son and heir, who granted them to one Richard de Gatewayk in fee, and Richard was seised by the hand of one John de Haselholte, son

of Simon the ancestor, then tenant. From Richard the services descended to John formerly husband of Joan, as to son and heir, *absque hoc* that the tenements were in the seisin of William de Braose in the time of Edward I. "Et hoc parata est verificare et petit judicium." Simon rejoins that William de Braose was seised of the said tenements in his demesne as of fee in the time of Edward I., and did, in the time of Edward I., aliene them. Issue was joined thereon. The verdict was that William de Braose was seised of the tenements in his demesne as of fee in the time of Edward I., and did, in the time of Edward I., aliene them. Damages 20 marks. Judgment was given for Simon to recover the damages, with execution by *Elegit*. A writ of error was, however, sued.

## No. 55.

A.D. 1341. judgment of this avowry, which supposes the tenements to be of a fee other than the King's fee.—And afterwards they prayed a *Prece partium* without essoin.—HILLARY. Good Heavens! in that case nothing could be entered—neither the avowry nor the reply.—Afterwards, at another day, *Blairk* said, Whereas you say that W. de Brus (Braose), in the time of the King, the grandfather, &c., held these tenements as parcel of the barony, and enfeoffed in fee simple, as above, we tell you that one W., formerly baron of Bramber, in the time of King Henry, the great-grandfather, &c., before the 30th year of his reign, enfeoffed one J. to hold of himself by the services, as above, and afterwards granted the same services to the ancestor of our husband, without this that W., of whom you speak, had anything in the time of the King, the grandfather, &c.—And the other side said the contrary.

Replevin. § Simon Haselholt brought his Replevin against J. de Gatewayk, who avowed for the reason that the grandfather of the plaintiff Simon held a carucate of land, &c., of John de G., formerly husband of Joan, by fealty and by the services of 5 marks by the year, &c., and alleged seisin; and he made the descent of the signory to three daughters, who assigned the third part of the services to this Joan to hold in dower, by virtue of which assignment she was seised, and for so much in arrear she avowed as in parcel of the tenements held in the form aforesaid.—*Gaynesford*. These tenements were in the seisin of William Brewes (Braose) as parcel of the barony of Bramber, which barony he held *in capite* of King Edward, the grandfather, and that William enfeoffed of these tenements Simon Haselholt, the grandfather of Simon the plaintiff, in fee simple; and the present King seized the tenements into his hand on account of the alienation [without license], and granted the tenements to this Simon, to hold to him and his heirs for ever of the King and his heirs by the services due; so we are the King's tenant; judgment whether you for any signory in these tenements can make avowry, &c.

Entry. (55.) § *Pole* rehearsed how a writ of Entry had been for a long time pending, where the demandant

## No. 55.

ment de ceste avowere, qele le suppose estre dautri A.D. 1341.  
 fee qe le fee le Roi.—Et puis ils prierent un *prece partium* sanz essone.—HILL. De par dieux ! donques ne serra rien entre—ne lavowere ne la replicacion.—Puis, a lautre jour, *Blayk*. La ou vous dites qe W. de Brus, en temps le Roi aiel, &c., tient ceux tenementz come parcelle de la baronie, et feffa en fee simple, *ut supra*, la dioms nous qun W., jadis baroun de Brembre, en temps le Roi H. besael, &c., avant lan de son regne xxx., enfessa un J. a tenir de lui mesme par les services, *ut supra*, et puis granta mesmes les services al auncestre nostre baroun, saunz ceo qe W., de qi vous parles, rien avoit en temps le Roi lael, &c.—*Et alii e contra*.

§ Symond<sup>1</sup> Haselholt porta son *Replegiari* vers J. de Gadewik, *Replegiari*. qe avowa par la resoun qe son aiel Symond qe se pleint tynt un carue de terre, &c., de Johan de G., jadis baron Johane, par fealte et par les services de v. mars par an, &c., et lia la seisine; et fist la descente de la seignurie a iij.<sup>2</sup> filles, quex assignerent la terce partie de services a cesti Johane a tenir en douwer, par quel assignement ele fut seise, et pur tant arere ele avowe com en parcel dez tenementz tenuz en la forme avantdite.—*Gayn*. Ceux tenementz furent en la seisine William Brewes com parcel de la barunye de Brembre, quel baronye il tient en cheif de Roy E. laiel, le quel W. enfessa de ceux tenementz Symond Haselholt, aiel S. qe se pleynt, en fee simple; et le Roy qore est seisi lez tenementz en sa mayn pur lallienacion, et granta les tenementz a ceste S., a tenir a luy et a ses heirs a touz [jours] du Roy et de ses heirs par les services duez; issint sumes le tenant le Roy; jugement si vous pur nule seignurie en ceux tenementz puissiez avowere faire, &c.

(55.)<sup>3</sup> § *Pole* rehercea coment un bref dentre ad *Entre*. pendu longement de ceo, ou le demandant suppose qe

<sup>1</sup> This report of the case is from L. alone.

<sup>2</sup> L., iiij.

<sup>3</sup> From T. alone.

## Nos. 56, 57.

A.D. 1341. supposed that the tenant had not entry but by B.; the tenant alleged that he entered by B. and K., B.'s wife, and that by fine, and he prayed judgment of the writ; and thereupon the demandant offered to aver that the entry was by B. alone; and thereupon they stood to judgment whether the averment was admissible in opposition to the fine.—We pray seisin of the land (said *Pole*), or otherwise that you award the averment.—HILLARY. We are not advised.—And he adjourned them.

Dower. (56.) § Dower.—*Thorpe*. She was not, when her husband died, of such an age that she could merit dower.—HILLARY. State with certainty of what age she was.—*Thorpe*. Not nine years old.—*Gayneford*. She was nine years old and more; ready, &c.—*Thorpe*. Show her age to have been such that she would be dowable thereat, viz., ten years at least.—HILLARY. In the case of John Benstede the widow was endowed at the age of nine years and a half.—*Gayneford*. It is admitted by his first answer that at nine years of age she is dowable; will he maintain his first answer or not?—*Thorpe*. She was not nine years of age; ready, &c.—*Gayneford*. She was nine years old and more; ready, &c.—And the other side said the contrary.

Dower. § On a writ of Dower *Thorpe* said the demandant was within the age of nine years at the time of the death of her husband. *Gayneford*. She was of the age of nine years and more.—And the other side said as above.—And so to the country.—And both sides said that at the age of nine years she was dowable, &c.

Note. (57.) § Note that an attorney showed that his principal had sued execution on a Statute Merchant, and the Sheriff returned that the obligor had nothing, &c.; and we tell you that he has assets in the liberty of Durham, and we pray a writ to the Bishop.—HEPPES-COTES. Go to the Chancery, for the Bishop will do

## Nos. 56, 57.

le tenant nad entre si noun par B.; le tenant allege A.D. 1341. qil entra par B. et K. sa femme, et ceo par fyne, et demanda jugement du bref; a quei le demandant tendi daverer lentre soulement par B.; et sour ceo sont en jugement si laverement soit resceivable contre la fyne. —Nous prioms seisine de terre ou autrement qe vous agardez laverement.—HILL. Nous ne sumes mye avise. —Et les ajourna.

(56.)<sup>1</sup> § Dowere.—*Thorpe*. Ele ne fust mye de tiel Dowere. age qele poet dower descerver quant son baroun morust.—HILL. Mettez en certain de quel age ele fust.—*Thorpe*. Noun pas de ix. aunz.—*Gayn*. Ele fust de ix. aunz et plus; prest, &c.—*Thorpe*. Moustrez lage tiel de quele ele serreit dowable, saver de x. aunz ou meyns.—HILL. En le cas Johan Benstede la femme fust dowe de ix. aunz et demi.—*Gayn*. Il est accepte par son primer respons et de ix. aunz ele est dowable; voet il meyntenir son primer respons ou noun?—*Thorpe*. Ele ne fust mye de ix. aunz; prest, &c.—*Gayn*. Ele fust de ix. aunz et plus; prest, &c. —*Et alii e contra*.

§ En<sup>2</sup> un bref de douwere *B. Thorpe*. Le demandant fuit Dowere. dedeins age de ix. aunez al temps de la mort soun baroun.—*Gayn*. Ele fuit de ix. aunz et plus.—*Et alii ut supra*.—*Et sic ad patriam*.—Et les deux disoient qe de ix. aunz ele fuit douwable, &c.

(57.)<sup>3</sup> § *Nota* qun attourne moustra qe son mestre *Nota*. avoit suy execucion sur un estatut marchant, et le Vicounte retourna qil nad rien, &c.; et vous dioms qil ad assetz en le fraunchise de Duresme, et prioms bref al Evesqe.—HEPP. Alez a la Chauncellerie, qar levesqe

<sup>1</sup> From T. alone, as far as the point at which the larger type ends.

<sup>2</sup> This report of the case is from L. alone.

<sup>3</sup> From T. alone.

## No. 58.

A.D. 1841. nothing for our writ; but there you can have a remedy. *Quære* how.—And HEPPESCOTES said that by voucher anywhere out of the county one will have to the value there existing.

*Quære  
impedit.*

(58.) § *Quære impedit* for the King, against the Bishop of London, in respect of the prebend of Oxgate in the church of St. Paul. And his count was that the prebend became vacant by the creation of William de Ayremynne, the prebendary, &c. [to be Bishop of Norwich],<sup>1</sup> and so it remained vacant until the temporalities came into the King's hand by the death of Richard de Bynteworth.—*Kelshu'le*. The prebend was not vacant while the temporalities, &c., were in the King's hand through the death of Richard; ready, &c.—*Thorpe*. Show yourself to be patron.—And he did not adopt that course (*Quære*), but he said that the prebend did not become vacant while the temporalities were, &c., as the King supposed by his count; ready, &c.—*Stouford*. William de Ayremynne was created a Bishop at the Court of Rome, and the Pope did not make a provision, whereas no other can provide or give since the prebend became vacant at that Court; judgment whether to the averment, &c.—HILLARY. We have nothing to do with that.<sup>2</sup>—Therefore *Stouford* accepted the averment on behalf of the King, and prayed a jury from London, where the stall is, and from Middlesex also, where the prebend is.—HILLARY. You shall have jury process only to the Sheriff of the county where the original is, for there the prebend is.—And for the King a writ was prayed to the Coroners, because the Sheriff was aiding the party; and it was said that he should not have it until some default was found in the Sheriff.

<sup>1</sup> As appears by the record.

<sup>2</sup> The matter does not appear in the record.

## No. 58.

ne fra rien pur nostre bref; mes la poez aver remedie. A.D. 1341.  
 —*Quære qualiter.*—Et HEPP. dit qe par vouche de hors  
 homme avera a la value quereux la, &c.

(58.)<sup>1</sup> § *Quare impedit*, vers levesqe de Londres, pur *Quare*  
 le Roi, de la provandre de O.<sup>2</sup> en leglise de Seint *impedit*.  
 Pawel. Et conta coment la provandre se voida par la  
 creacion William de Ayremynne,<sup>3</sup> provandre, &c., et  
 issint voide demora tanqe les temporaltes vindrent en  
 la mayn le Roi par la mort Richard de Bynteworthe.<sup>4</sup>  
*Kels.* La provandre ne fust mye voide esteantz les  
 temporaltes, &c., en la mayn le Roi par la mort  
 Richard; prest, &c.—*Thorpe.* Soiez avowe.—Et il  
 nusa pas (*Quære*), mes dit qele ne voida pas esteant  
 les temporaltes, &c., come le Roi supposa par son conte;  
 prest, &c.—*Stouf.* William de Ayremynne<sup>3</sup> fust cree  
 en Evesqe a la Court de Rome, et le Pape ne purveust  
 pas, la ou nul autre poet purvere ne doner quant ele  
 voida a la Court; jugement si al averement.—*HILL.*  
 Nous navoms qe faire de ceo; par quei *Stouf.* prist  
 laverement pur le Roi, et pria pais de Londres, ou le  
 stalle est, et de Middelsexse auxi, ou la provandre est.  
*HILL.* Vous naverez pas fors al Vicounte ou loriginal  
 est, qar la est la provandre.—Et pur le Roi fust prie  
 bref as Coroners, qar le Vicounte est en eidant a la  
 partie; et fust dit qil navera pas avant qe defaute  
 soit trove en le Vicounte.

<sup>1</sup> From T. alone, but corrected  
 by the record, *Placitu de Banco*,  
 Easter, 15 Ed. III., R<sup>o</sup>. 302. Com-  
 pare No. 57 of Mich. Term,  
 15 E. 3.

<sup>2</sup> T., C. The prebend was that of  
 Oxgate.

<sup>3</sup> T., W. Eyrmyne, instead of  
 William de Ayremynne.

<sup>4</sup> T., Wynteworthe, instead of de  
 Bynteworth.



Nos. 59, 60.

A.D. 1341. (59.) § The King sued a *Scire facias* (against the guardian of the Spiritualities of the Bishopric of N., and against the Dean and Chapter, and against U. Jacoby, who held the prebend on the collation of the Pope) upon a judgment given for the King in a *Quare impedit* brought against H., heretofore Bishop, in respect of the same prebend.—All made default.—*Thorpe* prayed execution.—SCOT. The King is himself seised of the temporalities; besides, we will consider whether this writ lies against those who cannot be adjudged tenants, and who are strangers to the judgment.—Nevertheless execution was awarded, &c.

Statute Merchant. (60.) § Where execution of a Statute Merchant had been made on the lands of the debtor, he produced an acquittance as to part; and part was levied, and the residue thereof was tendered in different ways; and he had a writ to cause the creditor who had executed the acquittance and the creditor's assignee to come. When the writ was sued the assignee came; the creditor made default. Therefore *Distringas*, and *Idem dies*, &c. On the day given the creditor was in custody of the Marshal on another action of Account, and was brought to the bar against his own wish, although he desired to absent himself.—*Bluk* prayed that he might be put to answer to the deed [of acquittance], but the assignee made default, whereupon he said that he ought not to answer without the assignee.—*Thorpe*. You can answer as to your own deed without the other.—*Pole*. It is necessary that the assignee be party to the account. Besides, a writ supposes that part is assigned away, and as to that you tender payment, whereas on a Statute Merchant no one ought to be compelled to take his money after he has become seised of the lands, for his time is limited to hold the lands until he has levied, &c.—*Thorpe*. The tender of the money which is in arrear is nothing to

## Nos. 59, 60.

(59.)<sup>1</sup> § Le Roy suyt un *Scire facias* vers le gar- A.D. 1341.  
deyn de espirituele de Evesqe de N., et vers le Dean *Scire*  
et le Chapistre, et vers U.<sup>2</sup> Jacoby, qe tient la pro- *facias.*  
vendre de la collacion le pape, hors de une jugement [Fits.  
qe se tailla pur le Roy en un *Quare impedit* porte *Quare*  
vers H., jadis Evesqe, et ceo de mesme la provendre.— *impedit,*  
Totez fesoient defaute.—*Thorpe* pria execucion.—SCOT. 160.]  
Le Roy est mesme seisi de temporalte; ov ceo nous  
voloms aviser si ceo bref gise vers ceux qe ne pount  
estre ajuge tenant, qe sount estranges al jugement.—  
*Tamen* execucion fuit agarde, &c.

(60.)<sup>1</sup> § La ou execucion destatut marchant fuit fait Statut  
des terrez le dettour, il moustra aquitance de partie; et *marchant.*  
partie fuit leve, et le remenant tendu en divers cours;  
et avoit bref de faire venir le creansour qe avoit fait  
aquitance et son assigne. Le bref suy, lassigne vynt;  
creansour fist defaute. *Ideo* destresse et *Idem dies*, &c.  
Al lautre jour le creansour fuit en garde de Marescha  
en autre accion dacompte, et fuit mene a la barre maugre  
le seon, la ou il voleit se absenter.—*Blaike* pria qil fuit  
mys de respondre al fait, mes lassigne fist defaute, par  
quei il dit qe ne devoit respondre sanz assigne.—*Thorpe*.  
A vostre fait demene poiez respondre saunz lautre.—  
*Pole*. Il covyent qe lassigne soit partie al compte.  
Estre ceo, un bref suppose qe partie est aliene, et ceo  
tendres vous a paier, en tant par statut marchant ne  
doit james estre arte de prendre ses deners apres ceo  
qil est seisi, qar son temps est lymite a tenir les terres  
tanqil eit leve, &c.—*Thorpe*. Lentendere des deners qe  
sont arere nest rien a vous, qar ceo attient a vostre

<sup>1</sup> From L. alone.<sup>2</sup> L., Urfe nat.; probably a corruption of some Italian name.

## Nos. 61-3.

A.D. 1341. you, for that is a matter affecting your assignee. On the other hand, I think that one cannot hold another's lands in gage if the debtor be ready to pay; and I say that he may be ousted afterwards.—Afterwards the creditor was put to answer to the deeds.

Præcipe  
quod  
reddat.

(61.) § On a *Præcipe quod reddat scriptum obligatorium de debito* the count was as for a deed of annuity, and exception was taken to the writ, and it was adjudged good.

Mesne.

(62.) § On a writ of Mesne it was said that the tenements were out of the fee of the person by whom the plaintiff supposed that he had been distrained; judgment of the writ.—*Gayneford*. You shall not be admitted to that, for he and his predecessors have from all time been seised of all the services, &c., through the hands of you and of your ancestors; judgment, &c.—And, nevertheless, the averment *Hors de son fee* was received.—And the other side said the contrary.

Præcipe  
quod  
reddat.

(63.) § On a *Præcipe quod reddat* the tenant said that one A. leased to him for his life, and by the same deed limited the remainder to B. in fee simple; afterwards B. granted the reversion to C. and D., C.'s wife, for their lives, and the tenant attorned. Afterwards B. granted the reversion to one L. in fee simple, after the death of the three, by reason of which grant the tenant attorned; and the tenant prayed aid of all the three to whom the reversions were granted.—*Stouford*. The husband and wife have nothing more than an expectation, and, perhaps, never will have anything more; and L. is further removed, and has nothing except by grant in remainder, by reason of which grant no law compels the tenant to attorn; judgment, &c.

## Nos. 61-3.

assigne. Dautre part, jeo quide qe homme ne put tenir A.D. 1341.  
altri terres en gage si le dettour soit prest a paier; et  
jeo die qe homme luy puisse ouster apres.—Pus il fut  
mys de respondre a lez faitz.

(61.)<sup>1</sup> § En un *Præcipe quod reddat scriptum obligatorium de debito* il counta dune escripte dannuite, et le  
bref chalange et agarde bon.

*Præcipe  
quod  
reddat.  
[Fitz.  
Briefs,  
682.]*

(62.)<sup>1</sup> § En un bref de meen fut dit qe lez tenementz  
sount hors del fee celuy par qi il suppose estre destreint;  
jugement du bref.—*Gayn.* Ceo navendrez pas, qar il  
et sez predecessours ount de tote temps este seisi de  
tote service, &c., par my le maynz de vous et de voz  
auncestres; jugement, &c.—*Et tamen* laverrement fut  
resceu hors de soun fee.—*Et alii e contra, &c.*<sup>2</sup>

*Meen.  
[Fitz.  
Estoppell,  
234.]*

(63.)<sup>1</sup> § En un *Præcipe quod reddat* le tenant dit  
qun A. lessa a luy a sa vie, et par mesme le fait le  
remeindre taille a B. en fee simple; pus B. granta la  
reversion a C. et D. sa femme allour vies, et attourna.  
Pus B. granta la reversion a un L. en fee simple, apres  
la mort lez trois, par quel grant il attourna, et pria eide  
de toutz iij. a quex la reversion furent grauntez.—  
*Stouf.* Le baron et la femme nount rien mes un biaunce,  
ne par cas james averount; et L. est plus loingtain, qe  
rien ad fors par grant en remeindre, par quel grant nul  
ley chace le tenant dattourner; jugement, &c.<sup>3</sup>

*Præcipe  
quod  
reddat.*

<sup>1</sup> From I. alone.

<sup>2</sup> This is probably the case which appears among the *Placita de Banco*, Easter, 15 Edw. III., R<sup>o</sup>. 157, d. The action was brought by John le Bee, of Stockton, against William de Burmyngham for acquittal of services demanded by the Prior of St. Mary's, Worcester.

The verdict was that the tenements were of the fee of the Prior, and that the damages were 100s. Judgment was given that the defendant should acquit the plaintiff of services. Damages 100s.

<sup>3</sup> This is probably a second report of No. 33.

## No. 64.

A.D. 1841. (64.) § On a *Præcipe quod reddat* the tenant had a day to perform his Wager of Law, and he came on the first day of the five weeks after Easter. The demandant prayed seisin because the tenant had not with him the persons ready to perform the wager of law. Nevertheless the COURT would not record default against him, &c.

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## No. 64.

(64.)<sup>1</sup> § En un *Præcipe quod reddat* le tenant avoit A.D. 1341.  
jour a faire sa ley, et vynt al primer jour de v. symenes <sup>Præcipe</sup>  
de Pasche. Le demandant pria seisine pur ceo qe navoit <sup>quod</sup> <sup>reddat.</sup>  
ove les gentz prest pur faire le ley. *Tamen* le COURT  
ne voleit pas recorder default sur luy, &c.

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<sup>1</sup> From L. alone.

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TRINITY TERM  
IN THE  
FIFTEENTH YEAR OF THE REIGN OF  
KING EDWARD THE THIRD  
AFTER THE CONQUEST.



TRINITY TERM IN THE FIFTEENTH YEAR OF  
THE REIGN OF KING EDWARD THE THIRD  
AFTER THE CONQUEST.

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No. 1.

A.D. 1341.  
Right of  
advowson.

(1.) § The Prior of the Holy Trinity of York brought a writ of Right of Advowson of the church of Wrexby<sup>1</sup> against the Prior of Drax. And heretofore the mise was joined; and now at the first day of term, *Blaik*, for the Prior of the Trinity, prayed that his proffer might be recorded and that the parties might be called.—*Thorpe*, for the Prior of Drax. We do not admit that he who proffers himself is now Prior of the Trinity; but we tell you that he who brought the writ and joined the mise was named John, and he who now proffers himself is named Eudo, and so he is a different person from the person who brought the writ, and can not continue the suit commenced by another person; judgment of nonsuit.—*PARNING*. How will you have a nonsuit against the Prior when he proffers himself? and you do not deny that he is Prior who is there at the bar, and he demands judgment whether you can hold to his nonsuit.—*Thorpe*. I have nothing to do with him, for he is not party to this writ, for the cause above. The question whether he is Prior or not is not to the purpose.—*PARNING*. If he who brought the writ be dead, it is clear that the writ is abated; and if he be deprived or deposed, perhaps it is otherwise; but if he be so, in any case, for you it is only an abatement of the writ; then that ought to be alleged by you in that manner, and you ought to demand judgment of

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<sup>1</sup> Perhaps Wragby.

DE TERMINO TRINITATIS ANNO REGNI REGIS  
EDWARDI TERTII A CONQUESTU QUINTO  
DECIMO.<sup>1</sup>

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No. 1.

(1.)<sup>2</sup> § Le Priour de la Seinte Trinite Deverwyk A.D. 1341.  
Draite da-  
vowisun.  
porta bref de dreit davowesoun del eglise de Wrexbye  
vers le Priour de Drax. Et autrefoitz la mise fust  
joynt; et ore le primer jour de terme, *Blaik*, pur le  
Priour de la Trinite, pria qe son profre fust recorde  
et qe les parties fuissent demandez.—*Thorpe*, pur le  
Priour de Drax. Nous ne conisoms pas qe celui qe  
profre soit Priour de la Trinite ore; mes vous dioms  
qe celui qe porta le bref et qe joyna la mise avoit  
noun Johan, et cestui qe se profre a ore ad a noun  
Eude, et issint est il autre persone qe porte le bref, qe  
ne poet continuer la suyte comence par autre persone;  
jugement de la nounsuyte.—PARN. Quant averez  
vous nounsuyte sur le Priour la ou il se profre? et  
vous ne dedites qil nest Priour celui qest la a la  
barre, et il demande jugement si a sa noun suyte  
puissez prendre.—*Thorpe*. Jeo nai qe faire de lui,  
qar il nest mye partie a ceo bref, *causa qua supra*.  
Le quel qil soit Priour ou noun ceo nest pas a purpos.  
—PARN. Si celui qe porte le bref soit mort, *constat*  
qe le bref est abatu; et sil soit prive ou depose, par  
cas cest autre; mes sil soit, a chescun regarde, pur  
vous ceo nest fors abatement du bref; donques duist  
ceo estre allege de vous par la manere et demander

<sup>1</sup> The reports of this Term are  
from the Temple MS. and the  
Lincoln's Inn MS.

<sup>2</sup> From T. alone, as far as the

point at which the larger type ends.  
Compare this case with No. 41 of  
the Easter Term immediately pre-  
ceding.

## No. 1.

A.D. 1341. the writ, and not hold to the nonsuit of him who is in Court; for the judgment now on the nonsuit would be final.—*Blak.* Every exception after the mise is joined is peremptory; and since he takes his exception on the nonsuit of the Prior, and the Prior proffers himself ready here in Court, we demand final judgment against him.—*R. Thorpe.* If I bring a writ by the name of R. Parning, and after the mise is joined I do not come, but another who bears the same name (as may happen between father and son) proffers himself for me against the tenant, there is nothing then to demand except by praying judgment on the nonsuit, and not by pleading in abatement of the writ. And so here, although the Prior who brought the writ is not called by his baptismal name.—*PARNING.* How shall the fact be ascertained whether he be the same person who brings the writ or not?—*Thorpe.* By averment between us.—*PARNING.* That is impossible—to take an averment when the effect of the issue, even though it passed for you, would only be a nonsuit according to your prayer; but should you take your plea to the writ, then your allegation might be proved; as if a feme sole bring a writ of Right, and after the mise or battle joined, it be alleged that she has taken a husband, upon that an inquest may be taken on the writ; so here.—*Thorpe.* The case is not similar; for there she who proffers herself is always a party, and if she disable herself *ex post facto*, the exception is to the writ and there is not a nonsuit; but in our case he who proffers himself is not party to the writ, and if the party to the writ were in Court and were deposed or deprived, I should plead to the abatement of the writ against him and not against a stranger, who can not continue a suit commenced by another.—And *HILLARY* said in this plea that if issue were taken

## No. 1.

jugement du bref, et noun pas prendre a la noun A.D. 1341. suyte de celui qest en Court; qar le jugement ore sur la noun suyte serreit fynal.—*Blayk*. Chescune excepcion apres la myse joynt est peremptore; et del heure qil prent sa excepcion a la nounsuyte le Priour, et le Priour se profre prest icy en Court, nous demandoms jugement fynal de lui.—*Thorpe*. Si jeo porte bref par noun de R. Parning, et apres myse joynt jeo ne veygne pas, mes un autre qe porte mesme le noun, come poet estre entre pere et fitz, se profre pur moy al tenant, nest autre chose a demander forsque prier jugement sur la noun suyte, et noun pas prier plee en abatement du bref. Et auxi icy, coment qe le Priour qe porte le bref ne soit pas nome par noun de baptesme.—*PARN*. Coment serra la chose consceu sil soit mesme la persone qe porte le bref ou noun?—*Thorpe*. Par averement entre nous.—*PARN*. Ceo ne poet estre—de prendre averement quant leffect del issue, mesqil passa pur vous, ne serreit fors nounsuyte a ceo qe vous priez; mes ceo qe vous preissez vostre plee al bref, donques purra vostre entente estre prove; come si femme soule porte bref de dreit, et, apres myse oue bataille joynt, allege soit qele ad pris baroun, sur cela enquest poet prendre sur le bref; auxi icy.—*Thorpe*. *Non est simile*; qar la est ele touz jours partie qe se profre, et si ele soi face nounable *ex post facto*, cest al bref et ne mye nounsuyte; mes en nostre cas celui qe se profre nest mye partie a bref, et sil fust en Court et fust depose ou prive, vers lui jeo pledray al abatement du bref et noun pas vers estrange persone, qe ne poet continuer suyte commence<sup>1</sup> par autre.—Et *HILL*. dit en ceo plee qe si issu se prist sur le bref, et trouve

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<sup>1</sup> T., conn.

## Nos. 2-4.

A.D. 1341. on the writ, and it were found by the Inquest for the demandant, he should have final judgment, and if against him it would be only to the abatement of the writ.—PARNING. The Court will hold it as not denied that he who proffers himself is Prior.—Afterwards they came to terms, &c.

Writ of  
advowson. § The Prior of the Trinity of York brought his writ of Right of Advowson against the Prior of Drax, who joined the mise and had a day at the Octaves of the Trinity. At the first day of the Octaves the parties proffered themselves.—*Thorpe*. On the day on which the writ was brought, and on the day on which the mise was joined, one John was Prior of the Trinity, and he who proffers himself is named Hugh, but we do not admit that he is Prior, and, because John does not sue, we demand judgment of non-suit.—*Blak*. The Prior is named by name of dignity, and no one but a Prior can sue; and forasmuch as you do not deny that this person is Prior, judgment, &c.

Account. (2.) § Note that on a writ of Account, at the Grand Distress, the Sheriff returned *non est inventus nec aliquid habet*. The party came in his own person and pleaded to issue, and did not find mainprise, because the *Capias* was not issued.—*Quære* whether the Sheriff's return was sufficient.

Account. (3.) § Note that Account "for the time for which, &c., receiver of moneys" is good, although no receipt be supposed in the same county in which the writ is brought, &c.

Assise of  
Novel  
Disseisin. (4.) § Novel Disseisin of rent. The plaint was in respect of 8s. of rent, and it was said that if it was rent service the plaint was bad unless made in the form "with the appurtenances." Therefore the plaintiff added those words to his plaint. And because the tenant made default, the plaintiff was put to show what kind of rent he demanded; and he said rent service; and the assise was awarded.

## Nos. 2-4.

fust pur le demandant par enquest, qil avereit juge- A.D. 1341.  
ment fynal, et si contre lui fors al abatement du bref.  
—PARN. COURT tiendra nient dedit qe celui qe se  
profre est Priour.—*Postea* il furent acordez, &c.

§ Le<sup>1</sup> Priour de la Trinite de Everwik porta son bref de Bref  
droit davowescoun vers le Priour de Drax, qe joynt la mys et davowere.  
avoit jour as utaves de la Trinite. Al primer jour de utaves  
lez parties se profirent.—*Thorpe*. Jour de bref porte, et  
jour de la myse joynt, un Johan fuit Priour de la Trinite, et  
cesti qe se profere ad noun Hugh, mes nous ne conussoms  
pas qe cesti est Priour, et, de ceo qe Johan ne suyut pas, nous  
demandoms jugement de la noun suyte.—*Blaik*. Le Priour  
est nome par noun de dignite, et autre qe Priour ne put  
suyre; et de ceo qe vous ne dedites qe cesti n'est Priour  
jugement, &c.

(2.)<sup>2</sup> § *Nota* qen bref dacompt, a la graund destresse, Accounte.  
le Vicounte retourna *non est inventus nec aliquid*  
*habet*. La partie vient en propre persone, et pleda a  
issue, et ne trova pas meynprise, qar *Cupias* ne fust  
mye issue.—*Quære* si le retourn le Viscont fust  
sufficeant.

(3.)<sup>2</sup> § *Nota* qe acompt de *tempore quo*, &c., re- Accounte.  
*ceptor denariorum*, est bon, tout ne soit nulle resceite  
suppose en mesme le counte ou le bref est porte, &c.

(4.)<sup>2</sup> § Novele disseisine de rente. La plainte fust Assisa  
de viijs. de rente, et fust dit si ceo fust rente Novæ  
service la plainte est malveis sil ne soit fait od les Disseisine.  
appurtenances; par quei il ajusta celui parole a sa [Fitz.  
plainte. Et pur ceo qe le tenant fait defaute, il fust Pleint,  
mys de moustrer quele rente il demanda; et il dit 10; 15 Li.  
rente service; et lassise est agarde. Ass., 4.]

<sup>1</sup> This report of the case is from  
L. alone.

<sup>2</sup> From T. alone.

## Nos. 5, 6.

A.D. 1341. (5.) § A writ was brought against a man and his wife, and the wife was admitted, and she vouched and was warranted, and the warrantor pleaded to the inquest; and afterwards on another day the warrantor proffered himself by attorney.—*Blak*, for the demandant, said :—The warrantor is dead, and although one answers by attorney, that is only a delay of my suit, wherefore I pray a resummons against the wife.—*HILLARY*. Can you have a resummons against the wife without her husband?—*Thorpe*. Yes; he has lost by his default, wherefore he shall not anew be made party.—And then a resummons was awarded against the wife alone.

Audita  
Querela.

(6.) § Hamond Barbour was distrained to answer Richard<sup>1</sup> wherefore he had sued execution on a Statute Merchant, the proceedings being taken as upon an acquittance which testified that he had received the money; and Richard came and had oyer of the writ and of his deed, which was a general acquittance of all actions.—*Derworthy*. We have a day to answer to our deed, which testifies the receipt of the money, as supposed by the writ by which we have a day; and this deed which he now puts forward does not suppose any receipt of money, but is a general release, in which case he ought to have had a different writ.—This exception was not allowed; wherefore *HILLARY* put him to answer over.—*Derworthy*. We tell you that Richard himself and others took us, &c., and led us to B. (and he assigned a different place from that of the date in the deed), and detained us there, and by menace and fear of death compelled us to execute that deed against our inclination and good will; judgment whether by that deed, &c.—*Gayneford*. You were at large; ready, &c.—And the other side said the contrary.—And the Inquest will come from

<sup>1</sup> Richard le Mulewarde, of Great Marlow, as appears by the record.

## Nos. 5, 6.

(5.)<sup>1</sup> § Bref fust porte vers un homme et sa femme, A.D. 1341. et la femme fust resceu, et voucha, et fust garranti, [Fitz. et le garrant pleda al enquest; et puis le garrant a Resom- [ons], 17.] un autre jour se profry par attourne.—*Blayk*, pur le demandant,<sup>2</sup> dit qe le garrant est mort, et coment qun respond par attourne, ceo nest fors delay de jna suyte, par quei jeo prie resomons vers la femme.—*HILL*. Poez aver resomons vers la femme sanz son baroun? —*Thorpe*. Oil; il ad perdu par sa defaute, par quei il ne serra mye de rechief fait partie.—Et puis resomons fust agarde vers la fumme soule.

(6.)<sup>3</sup> § Hamond Barbour fust destreint a respondre *Audita* a Richard<sup>4</sup> pur quei il avoit suy execucion sur estatut *Querela*. marchant, sur acquittance qe tesmoigna qil avoit resceu les deners; qe vient et avoit oy du bref et de son fet, quele fust une generale acquittance de touz accions.—*Derworth*. Nous avoms jour a respondre a nostre fet, qe tesmoigne resceite des deners, a ceo [q]est suppose par le bref par quel nous avoms jour; et ceo fet quel il mette ore avant ne suppose nul resceite des deners, mes relees general, en quel cas il dust aver ew autre bref.—*Non allocatur*; par quei *HILL*. lui mist outre.—*Derworth*. Nous vous dioms qe Richard mesme et autres nous preistrent, &c., et nous menerent a B.;—et assigna autre lieu qe la date ne volcit;—et nous detiendrent illoeqes, et par menace et doute de mort nous firent faire ceo fet contre nostre gree et bone volunte; jugement si par ceo fait, &c.—*Gayn*. Vous fustes a large; prest, &c.—*Et alii e contra*.—Et

<sup>1</sup> From T. alone.

<sup>2</sup> T., defendant; but the word demandant is written over it in a later hand.

<sup>3</sup> From T. alone. The record of this case appears among the *Placita*

*de Banco*, Trinity, 15 Edw. III., R<sup>o</sup>. 40. It is printed below in the Appendix B.

<sup>4</sup> T., Robert, here and throughout the report.



Nos. 7-9.

A.D. 1341. the neighbourhood where the imprisonment is alleged.—*Thorpe*. We pray that Richard may find mainprise to answer for the debt, in case Richard should afterwards absent himself. And this was granted to him in this same suit in the Eyre of London, and to others in this Court in the same case.—HILLARY. Of this we are not yet advised.—And HILLARY afterwards said that he should not be on mainprise.—And afterwards, at *Nisi prius* in the same term, at St. Martin's [le Grand] in London, before HILLARY an inquest was taken, and the jurors said that the deed was made, in fear of death, against his will, and that he was detained until it was made.—And note that no deed was produced to the Inquest; for HILLARY said it was not necessary if the deed was not denied, &c.

Audita  
Querela.

(7.)<sup>1</sup> § Ralph de Wedone was distrained to answer a Knight wherefore he sued execution on a Statute Merchant contrary to his deed. And Ralph did not come; therefore an *Alias distringas* issued, and the Knight could not find mainprise, but he was ordered to prison in the Fleet. And note that he came, by writ of the Justices, out of Newgate, brought by the Sheriffs of London.

Note. (8.) § Note that an essoin of being in the King's service does not lie in a *Scire facias*.

Note. (9.) § Note that, according to some of the clerks, in a plea of land, after the inquest is joined, the demandant can essoin himself after each appearance, although the inquest come, but the tenant shall have only one essoin. But, according to HILLARY, if the inquest be not ready, the tenant shall have several essoins; because the Statute, says, "Let not the inquest be deferred by essoin"; so that cause is wanting when the inquest is not ready.

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<sup>1</sup> See Easter, 15 E. 3., No. 15.

## Nos. 7-9.

enquest vendra del visine ou lemprisonement est A.D. 1341. allege.—*Thorpe*. Nous prioms qe Richard puisse trover meinprise de respondre de la dett,<sup>1</sup> en cas qe Richard sabsente apres. Et ceo fust grante a lui en mesme cestui suyte en leire de Londres, et autres ceinz en mesme le cas.—*HILL*. De ceo ne sumes mye avise uncore.—Et *HILL* puis dit qil ne serra pas a maynprise.—Et puis, par *Nisi prius*, mesme le terme a Seint Martyn en Londres, devant *HILL*, enquest fust pris, qe dit qe le fet se fist, pur doute de mort, encontre son gree, et qil fust detenu qil fust fait.—Et *nota* qe nul fel fust mys avant al enqueste; qar, par *HILL*, il ne bosoigne pas si le fet ne fust dedit, &c.

(7.)<sup>2</sup> § Raufe de Wedone fust destreint a respondre a un Chivaler pur quei il suyst execucion contre son fet dun statut marchant. Et R. ne vient pas; par quei *Sicut alias* issit, et le Chivaler ne poet trover meinprise, mes fust comande en garde de Flete. Et *nota* qil vient, par bref des Justices, hors de Neuwagate, par Vicountes de Londres.

Audita  
Querela.

(8.)<sup>2</sup> § *Nota* qe essone des services le Roi ne gist mye en *Scire facias*.

Nota.  
[Fitz.  
Essone,  
14.]

(9.)<sup>2</sup> § *Nota* qen plee de terre, apres enquest joynt, le demandant se poet essoner apres chescune aparaunce, coment qe lenquest vigne, *per aliquos clericos*, mes le tenant navera qun essone. *Sed, per HILL*, si lenquest ne seit pas, il avera plusours; *quia Statutum dicit non differatur inquisitio per essonium*; issint qe cele cause faut quant enquest nest pas prest.

Nota.

<sup>1</sup> T., date; but the word dett is written over it in a later hand.

<sup>2</sup> From T. alone.

## No. 10.

A.D. 1341. (10.) § Assise of common of pasture, as in gross, Assise of  
Common. to common in 200 acres of moor and heath, in all seasons of the year, with all kinds of beasts.—*Thorpe*. You have here the tenants by bailiff, and you see clearly how he makes his plaint in respect of common as in gross; wherefore let him show what is his title to the common.—*Pole*. A bailiff can not plead except to the assise, nor consequently can he compel the plaintiff to show a specialty; wherefore let him say what he pleases to the assise, and we will satisfy you when he shall have pleaded to the Court.—*HILLARY*. We will never award the assise without a title, whether bailiff challenge it or not.—*Thorpe*. Certainly that is true; and since his writ makes the common in gross, it is different from what it would be if his plaint were for rent, where the party could not know whether it was rent service or rent charge.—*Pole*. First of all the party ought to plead, and we pray you to record that the bailiff says nothing.—*HILLARY* (JUSTICE). Show your title.—And *Pole* showed a deed by which one Richard de Batchworth, lord of Harefield,<sup>1</sup> granted<sup>2</sup> [to Agnes, late wife of John de Melcheburne, and to Robert the plaintiff<sup>1</sup>] a messuage and a croft with common in 200 acres of moor and heath and other the appurtenances with warranty; and he said that the grantor was seised of a manor of which the place where the common, &c., was parcel.—*Thorpe* imparled, and came back and said, Sir, you see clearly how he supposes by writ and plaint that the common is in gross, and thereupon he has produced a specialty which proves that it is rather common appurtenant than in gross; judgment of the writ. Besides, we tell you that last term he himself brought an assise

<sup>1</sup> The names have been supplied from the record.

<sup>2</sup> The words in the roll are "ded't et concessit."

## No. 10.

(10.)<sup>1</sup> § Assise de comune de pasture, come un groos, A.D. 1341. a comuner en cc. acres de more et breuere, par touz Assise de Comune. [Fitz. Assise, 111.; 15 Li. Ass. 5.] seisons del an, ove touz maners des avers.—*Thorpe*. Vous avez cy les tenantz<sup>2</sup> par baillif, et vous veez bien coment il se pleint de comune come dun gros; par quei moustre ceo qil ad de la comune.—*Pole*.<sup>3</sup> Baillif ne poet pledre fors al assise, ne *per consequens* chacer pleintif de moustrer especialte; par quei die ceo qil voudra al assise, et nous ferroms gree quant il avera plede a la Court.—*HILL*. Nous nagarderoms jammes lassise saunz title, le quel baillif le chalenge ou noun.—*Thorpe*. Certes cest verite; et il est autre quant son bref le fait un gros qe si sa pleint fust de rente, ou partie ne poet saver le quel se fust rente service ou rente charge.—*Pole*. Primes deit partie pledre; et nous prioms voz recorder qe le baillif dit rien.—*HILL*. (JUSTICE). Moustrez vostre title.—Et *Pole* moustra fet par quel un R. granta un mesuage et une crofte<sup>3</sup> ov comune en cc. acres de more et bruere *et aliis pertinentiis* ove garantie, et dit qe le grantour fust seisi dun manoir dont le lieu ou la comune, &c., fust parcelle.—*Thorpe* enparla, et revient, et dit, Sire, vous veez bien coment il suppose par bref et plainte la comune estre un gros, et sur ceo ay mys avant especialte pur title qe prove qe ceo serreit pluis toust comune appurtenaunt qun gros; jugement du bref.<sup>4</sup> Ovesqe ceo, vous dioms qe cest dreyn terme il mesme

<sup>1</sup> From T. alone, as far as the point at which the larger type ends, but corrected by the record, *Placita de Banco*, Trinity, 15 Edw. III., R<sup>o</sup>. 196. It there appears that the action was brought by Robert son of John de Melcheburne against Thomas de Louthe and Margaret his wife, and William le Hewere, in respect of common of pasture in Herefeld (Harefield), Middlesex.

<sup>2</sup> The tenants were Thomas and Margaret. The assise was taken against William by default.

<sup>3</sup> T., toft.

<sup>4</sup> According to the roll the defendants prayed judgment "si assisa inter eos fieri debeat, &c." The rest of the record is as follows:—"Et Robertus dicit quod prædictus Ricardus fuit dominus prædictæ villæ de Here-

## No. 10.

A.D. 1341. against us in respect of common appendant in the same place, by suing which he has affirmed our exception which he afforded us just now; and that assise is still pending.—*Pole*. These are two exceptions; one lies in law, viz, whether the specialty be such or not by itself; the other lies in fact, viz, whether we claimed common in the same place or not; hold to one of them.—*HILLARY*. The two require different judgments.—*Thorpe*. They both lie in law; for we take exception to the specialty as by matter in law, and the other exception is affirmed by matter of record which lies in law.—*HILLARY*. When he demanded common as appendant, no specialty was or need have been produced; wherefore you speak in vain of that other assise; but, as it seems, common can not be granted by a specialty except in a certain vill, and that requisite is wanting here; moreover, that grant may as well be of common of turbary or fishery as of common of pasture; and the words of the specialty are "with common in moors and heaths and other appurtenances"; so it seems that the common is appurtenant.—*Stouford*. As to the first point which you speak of, that common as in gross must be granted in a certain vill, and some certain common such as common of pasture, &c., I say that when the grant is general it shall be understood according as it has been used,

## No. 10.

porta assise vers nous de comune appendant en mesme A.D. 1341. le lieu, par quele suyte il ad afferme nostre excepcion qe nous dona a ore; et cele assise pent uncore.—*Pole*. Ceux sont deux chalanges; le un gist en ley, si lespecialte seit tiel ou noun et par lui; lautre chiet en fet si nous clamames comune en mesme le lieu ou noun; tenez a lun.—*HILL*. Ils demandent devers jugements les deux.—*Thorpe*. Lun et lautre chiet en ley; qar nous chalangeoms lespecialte par chose en ley, et cel est afferme par chose de record qe chiet en ley.—*HILL*. Quant il demanda comune come appendant, nul especialte fust ne ne dust estre mys avant; par quei vous parlez en veigne de cel autre assise; mes, a ceo qe semble, comune par especialte ne poet estre graunte si noun en certeine ville, et ceo faut issi; outre ceo, cel graunt poet auxi bien estre de comune de turbare ou pecherie come de comune de pasture; et lespecialte voet *cum communa in moris et brueries et aliis pertinentiis*; issint qil semble qe cest apurtinant.—*Stouf*. Al primer point qe vous parles, qe comune come gros serra graunte en certeine ville, et de certeine comune come de pasture, &c., jeo dye quant graunte general, solonqe ceo qil est use,

“felde, et per factum prædictum  
 “concessit prædictis Agneti et  
 “Roberto communam prædictam,  
 “ut per verba in eodem scripto  
 “plenius apparet, quæ quidem  
 “communa de jure debet dici  
 “quoddam grossum per se et non  
 “pertinens alicui libero tene-  
 “mento,” and Robert prays the  
 assise. “Super quo quæsitum est  
 “a præfato filio Johannis si  
 “prædictumcroftum sit arabilis  
 “nec ne. Dicit quod est terra  
 “arabilis. Et, quia prædictus  
 “Ricardus, per scriptum prædic-  
 “tum, concessit prædictis Agneti

“et Roberto prædictum mesuagium  
 “cumcrofto et cum communa  
 “in mora, &c., et idem Robertus  
 “cognovit quod prædictum crof-  
 “tum est terra arabilis per quod  
 “videtur Curie hic quod com-  
 “muna illa non potest dici alia  
 “communa quam communa per-  
 “tinens prædictæ terræ et non  
 “grossum per se, sicut idem Ro-  
 “bertus superius supponit, Ideo  
 “consideratum est quod idem Ro-  
 “bertus nihil capiat per assisam  
 “istam, sed sit in misericordia  
 “pro falso clameo suo.”

## No. 10.

A.D. 1341. and in the same place and of the same common; and as to the other point, viz., that it must be appendant, I say that it can not be, since the grantor was seised of both lands and granted it in a certain place and with warranty.—And note that HILLARY said that the Court would not take the assise, even though the tenant accepted the title as sufficient, if the specialty produced were not a sufficient title.—And then *Thorpe* said that the land was arable land, so that it would be rather understood to be common appendant than common by specialty.—HILLARY. So it seems to the COURT, by the specialty which is produced; wherefore let him take nothing by this assise, but let him be in mercy.

Assise of  
Common of  
Pasture.

§ In Assise of Common of Pasture as in gross a deed was produced by which one A. gave and granted to the plaintiff and his heirs a messuage and land in Harefield with common in moors and heaths.—*Thorpe*. The deed proves the common to be appurtenant to the land, for, inasmuch as he gave the land with the common, that can be only to have common according to the quantity of the land, and that he who shall have the land shall have the common; and he has made his plaint as to common with all manner of beasts, without limitation of number, and in all seasons; judgment of the writ, which is not warranted by the deed.—*Blaik*. If the lord of a vill grant common in his lands, where he cannot himself have common, that cannot be without common in gross; and where common is granted by general words, without certain statement of the seasons and the number, an estate passes to the greatest possible profit for the purchaser.—HILLARY. There is no vill named in which you are supposed to common. Besides, in moor there may be common of turbary as well as common of pasture.—*Stouford*. Where words lack certainty in the deed, they shall be judged according to what has been the custom.—*Herpescotes*. On a grant of common the grantee can himself take seisin, and, if he take seisin to a larger extent than the deed purports, that act ought not to charge the grantor.—*Thorpe*. In confirmation of what we have said, you have yourselves an assise pending in respect of common in the same place, and appurtenant to the same freehold, and that is an assise pending, by which you suppose

## No. 10.

homme lentendra, et en mesme le lieu et de mesme A.D. 1341. la comune; et a lautre point, qe ceo duist estre apendant, jeo die qe ceo ne poet estre, quant le grantour fust seisi de lun et lautre terre et granta en certain lieu et ove garrantie.—Et *nota* qe HILL. dit qe Court ne prendra pas assise, coment qe le tenant accepta le tite sufficeant, si lespecialte ne fust sufficeant tite quel est mys avant.—Et puis *Thorpe* dit qe la terre fust arable<sup>1</sup> terre, issi qe ceo serra pluis toust entendu apendant qe comune par especialte.—HILL. Issi semble a la COURT, par lespecialte qe est mys avant; par quei preigne rien par cestui assise, mes soit en la mercy.

§ En<sup>2</sup> assise de comune [de] pasture com un grose fait fut<sup>3</sup> mys avant par quel un A. dona et granta al pleyntif et ses heires mies et terre en Herefeld *cum communia in moris et brueris*.—*Thorpe*. Le fait prove la comune estre appartenante a la terre, qar, en tant com il dona la terre ov la comune, ceo ne put estre fors daver comune solom la quantite de la terre, et qe celui qe avera la terre avera la comune; et il est pleynt a comunier ove tote maneres bestez, sanz nombre, et en touz seisouns; jugement de bref qe nest pas garranti de fait.—*Blak*. Si seignour de ville grante comune en ces terres, la ou il ne put mesme aver comune, ceo ne put estre sanz groes; et la ou comune est grante [par] paroules generales, sanz mettre en certain les seisouns et le noubre, estat passa a greignour profit qe pust estre pur le [pur]chaceour.—HILL. Il nad pas ville nome ou vous dusses comuner. Estre ceo, en more put auxi bien estre comune de turbare com comune de pasture.—*Stouf*. La ou paroules<sup>4</sup> sont en non certain, homme les ajuggera solon ceo qe la chose ad este, par le fait.—HERESCOTES. En grant de comune le grante pust mesme prendre seisine, et, sil preigne seisine plus largement qe le fait ne voet, ceo ne doit pas charger lautre.—*Thorpe*. Pur afermer ceo qe nous avoms dit, mesmes avez assise pendante de comune appartenant ein mesme le lieu et a mesme le franctenement, quel assise est pendaunt, par le quel vous supposez la comune

Assise de  
Commune  
de Pasture.  
[Fitz.  
Comen,  
13.]

<sup>1</sup> T., ancienne.

<sup>2</sup> This report of the case is from L. alone.

<sup>3</sup> L., fit.

<sup>4</sup> L., par paroules.



## Nos. 11-13.

A.D. 1341. the common to be appurtenant; judgment, &c.—*Blak.* That cannot be adjudged to be the same common, if the common granted by the deed be in gross. Besides, that is another plea, &c.

Account. (11.) § Account.—We say that we were his steward and surveyor, and that others were his receivers.—*Thorpe.* That is tantamount to saying that you were not our receiver; ready, &c., that you were.—And on the traverse the issue was taken.

Pole corrupted (?). (12.) § In this term Monsieur William de la Pole was accused of having been corrupted (?) in the Exchequer, though formerly Chief Baron of that Court.

Continuation.<sup>1</sup> (13.) § *Thorpe.* Alesia, Countess of Lincoln, by her attorney, and Roger cousin and heir of Ebulo Lestrangle, without whom the said Countess can not answer, and who joins himself in answering with the said Countess, by his attorney, &c., deny tort and force and the right of the Abbot [of Kirkstede], &c., and the right of his church, &c. And *Thorpe* rehearsed the count, &c., of the Abbot as he counted in the writ of Right *de rationalibus divisis*, as appears above in Michaelmas term in the 14th year.—HILLARY. In this case the Abbot must count against both, for both will be parties to the mise.—*Thorpe.* It has not been usually seen that one has counted against him who was prayed in aid; nevertheless the count was counted against both at York, and exception was then taken to it and to the defence also by the Court; and there it was said that there was no need to count against any other than the tenant, or for any other than him to defend.—HEPPESCOTES. Certainly there is need, and so it is enrolled; wherefore it is good.—*Thorpe* anew denied tort and force

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<sup>1</sup> This is a continuation of T., case is cited in the notes to the  
 14 E. 3., No. 21, and of M., 14 last-mentioned report.  
 E. 3., No. 94. The record of the

## Nos. 11-13.

appurtenante; jugement, &c.—*Blayk*. Ceo ne put estre ajuge A.D. 1341. mesme la comune, sil soit un greos par le fait. Estre ceo, cest autre plee, &c.

(11.)<sup>1</sup> § *Acompt*.—Nous dioms qe nous fumes son *Acounte*. seneschal et surveour, et autres furent ses resceivours. —*Thorpe*. Tantamont qe nous ne fustes nostre resceivour; prest, &c., qe si.—Et sur le travers lissu fust pris.

(12.)<sup>1</sup> § En ceo terme Monsieur William de la Pole <sup>Pole</sup> *engent'*. fust enpeche de ceo qil estoit engentile en leschequer et si devant chief baroun de cele place.

(13.)<sup>1</sup> § *Thorpe*. Aleyse, Contasse de Nicol, par son *Residuum*. attourne, et Roger cosyn et heir Eble Lestraunge, sanz qi la dite Contasse ne poet respondre, et qe se joynt en responant a la dite Contasse, par son attourne, &c., defent tort et force et le dreit Labbe, &c., et le dreit sa eglise, &c.; et rehercea le cont, &c., Labbe come il conta en le bref de dreit de renable deviz come piert *supra anno xiiij.*,<sup>2</sup> *termino Michaelis*.—HILL. Il covient en ceo cas qe Labbe contast vers lun et lautre, qar tout deux serront parties a la myse.—*Thorpe*. Ceo nad pas este vewe comunement qe homme ad conte vers celui qe fust prie en eide; nepurquant le cont fust conte vers lun et lautre a Everwyk, et ceo adonques fust chalenge et le defens<sup>3</sup> auxi par Court; et la fust dit qil ne bosoigna pas de contre vers autre qe tenant ou defendre nient le pluis.—HEP. Certes si covient, et issi est il en rolle; par quei il est bien.—*Thorpe* de rechief defendit

<sup>1</sup> From T. alone.<sup>2</sup> T., xij.<sup>3</sup> T., fens.

## No. 14.

A.D. 1341. for both, as above, and the right of the Abbot and the right of his church absolutely, and the seisin of his predecessor, of whose seisin he counted as in right of his church absolutely as of fee and of right, namely of so many acres, &c., beyond the divisions and bounds; —(and he rehearsed the divisions and the count). And they put themselves on God and on the Grand Assise, &c., whether Alesia has greater right by the feoffment of our lord the King made to her and her husband Ebulo and the heirs of Ebulo, as in right of Roger Lestrangle cousin and heir of the said Ebulo, who joined himself to the said Countess, &c., by divisions and bounds, as the Abbot counted and then showed, together with other divisions, &c., as of her fee of Bolingbroke, &c., as she holds, or the Abbot to have the &c., and the divisions and bounds as he has counted as his right and the right of his church, as he demands.—And then the Abbot imparled and came back.—Roger made default.—And the Countess came and said for herself, Let the mise stand.—*Pole.* We pray that Roger's default may be recorded.—KELSHULLE (JUSTICE). To what purpose? You can have judgment against him. Besides, it will be said that there is no need that he should be called, seeing that he joined of his own accord.—Nevertheless the default was recorded.—And note that afterwards Alesia was essoined after each appearance.—See the plea above.

Formedon. (14.) § Formedon in the Descender by divers *Præcipes*. The demandant counted of a gift made in the time of King Henry (the Third). The tenant to one

## No. 14.

tort et force pur lun et lautre, *ut supra*, et le dreit A.D. 1341: Labbe et le dreit de sa eglise tout attrenche, et la seisine son predecessour, de qi seisine il conta come de dreit sa eglise tout outre come de fee et dreit, nomement de tant des acres, &c., outre les devyses et boundes; et rehercea les devyses et le conte. Et ceo mettent en Dieu et en la grande assise, &c., la quele Aleyse meoudre dreit par le feffement nostre seignur le Roi fait a lui et a Eble son baroun et les heirs Eble, come en le dreit Roger Lestraunge cosyn et heir le dit Eble, et se joynt a la dite Contasse, &c., par devyses et boundes, come Labbe conta et puis mostra, ovesqe autres devyses, &c., come de son fee de Bolyngbroke, &c., come ele tient, ou Labbe daver les, &c., et les devyses et boundes come il ad conte come son dreit et le dreit sa eglise, come il demande.—Et puis Labbe enparla adonques et revient.—Roger fist defaute.—Et la Contasse vient et dit pur lui estoise le myse.—*Pole*. Nous prioms qe la defaute Roger soit recorde.—*KELS. (JUSTICE)*. A quel effect? Vous poez aver jugement contre. Ovesqe ceo, homme voet dire qil ne bosoigne pas qil soit demande la ou il se joynt de gree.—*Tamen fuit recordata*.—*Et nota* qe puis Aleise apres [c]hescune apparaunce est essone.—*Placitum supra*.

(14.)<sup>1</sup> § Forme doun en descendre par divers *Præ-* Forma  
donationis.  
*cipes*. Il conta dun doun fait en temps le Roi H. Le

<sup>1</sup> From T. alone, as far as the point at which the larger type ends. The record of the case is among the *Placita de Banco*, Trinity, 15 Ed. III., R<sup>o</sup>. 105. The action, as there appears, was brought by Henry de Pynkeny against William de Babenham in respect of a messuage and lands in Cookham (Berks), against Robert son of William de Babenham in respect

of other lands in Cookham, and against John de la Garderobe in respect of other lands also in Cookham. There is nothing on the roll as to the prayer of aid of the King, which was disallowed. The alleged gift was by Simon Passelewe to William de Babenham and Joan his wife in special tail, and the demandant claimed as son of Alice the daughter of the donees. William

## No. 14.

A.D. 1341. *Præcipe* prayed aid of the King by virtue of a charter of King John, who enfeofed his great-great-grandfather, rendering to the King one mark by the year, &c. And as to another *Præcipe*, the tenant pleaded that parcel of what was demanded against him was parcel of the manor of Cookham which is Ancient Demesne; judgment of the writ; and as to the residue, he pleaded that the donor did not give. And as to another *Præcipe*, the tenant said that parcel was parcel of the manor of Cookham which is Ancient Demesne; judgment of the writ; and as to the residue he vouched.—*Pole*. As to their statements that the tenements are Ancient Demesne, they are parcel of the tenements which passed by the charter of King John, and so are frank fee; and as to the voucher, let it stand; and as to the prayer of aid of the King, we tell you that he to whom the gift was made by King John continued his seisin all his life, and after his death one J. his daughter entered and gave to S., whom we suppose to have been the donor to our ancestor in fee tail, and so our action is taken from a later time; and also your seisin can not be understood as continued by virtue of the charter, since the daughter of him who was enfeofed by the King divested herself, &c.—*Thorpe*. Change of estate can not be a matter to which the law puts me to answer; for, in an assise of Novel Disseisin, if I pray aid by virtue of the King's charter, it is not a reason for depriving me of the aid that you were seised by a feoffment made

## No. 14.

tenant a un *Præcipe* pria eide du Roy par chartre le A.D. 1341.  
 Roy Johan, qe feffa son tresael, rendant au Roy un  
 marc par an, &c. Et quant a autre *Præcipe*, il pleda  
 qe parcele de la demande fait vers lui fust parcele  
 du manoir de Cokham<sup>1</sup> qest ancienne demene; jugement  
 du bref; et quant a remenant il ne dona pas. Et quant  
 a autre *Præcipe*, quant a parcelle est parcelle du  
 manoir de Cokham<sup>2</sup> qest auncienne demene; jugement  
 du bref; et quant a remenant il voucha.—*Pole*. Quant  
 a ceo qil parlent qil dust estre ancienne demene, ceo  
 sont parcele des tenementz qe passerent par chartre  
 le Roy Johan, et issi fraunk fee; et quant a voucher  
 estoise; et quant a eide prier du Roy, vous dioms qe  
 celui a qi le doun se fist par le Roy Johan con-  
 tinua toute sa vie sa seisine, apres qi mort une J.  
 sa fille entra et dona a S., qe nous supposoms qe  
 fust donour a nostre auncestre en fee taille, et issi  
 est nostre accion pris de temps puis; et auxi vostre  
 seisine ne poet estre entendu continue par chartre,  
 del houre qe sa fille qe fust feffe par le Roy se  
 demyst, &c.—*Thorpe*. Change destat ne poet estre  
 chose a quei la ley moy mette a respondre; qar, en  
 assise [de] novele disseisine, si jeo prie eide par  
 chartre le Roi, ceo nest pas cause de toller eide pur  
 ceo qe vous fustes seisi par feffement puis la confeccion

de Babenham, tenant, as to part traversed the gift, and issue was joined thereon. Robert as to part, and John as to the whole of the tenements in respect of which the action was brought against them, pleaded severally that the tenements were parcel of the manor of Cookham which was Ancient Demesne. The demandant replied that the tenements were formerly in the seisin of King John, who gave (*dedit*) them by charter to Adam de Burnham the demandant's great grandfather

(whose heir he was), to hold to Adam and his heirs for ever, and that by virtue of the gift (*dona*) the tenements became frank fee. Issue was joined as to whether the tenements were Ancient Demesne or frank fee. On the day given the demandant *non pros*. As to the residue, Robert vouched William de Babenham, who was to be summoned.

<sup>1</sup> T., A.

<sup>2</sup> T., Rokynkham.

## No. 14.

A.D. 1841. since the making of the charter and were disseised ; and to your statement that the action is taken from a time since the cause of the aid prayer we have not to plead ; wherefore we pray the aid.—HILLARY. We shall hold the fact to be as he alleges ; and, if so, we shall oust you from the aid ; and if he ousts you from the aid it is in discharge of the King.—*Thorpe*. It is not ; for the King will then lose the mark reserved and his tenant.—HILLARY. He shows that one of your ancestors divested herself ; wherefore your estate can not be understood to be by the charter.—*Thorpe*. You do not show our estate to be any other ; and even if our ancestor divested herself, which we do not admit, it is possible that she was under age, and re-entered, or recovered, &c. ; judgment, and we pray the aid.—HILLARY. Will you not say anything else.—*Thorpe*. No, Sir.—HILLARY. We oust you from the aid by judgment.—And then as to the allegation touching Ancient Demesne, to the abatement of the writ, *Pole* said, Frank fee, as above, by the King's charter.—*Fencotes*. Ancient Demesne, without this that it is frank fee for the cause aforesaid ; ready, &c.—*Pole*. You shall not be admitted against the King's charter to the averment.—*Blaik*. It is produced by another, and so is only evidence.—And so the averment was admitted.

Formedon. § Henry de Pynkeney brought a Formedon in the Descender against J. de G., who said that the King by a charter (produced) gave the tenements to T. his ancestor, and prayed aid.—*Pole*. One Gunnora daughter and heir of this T. your ancestor gave the tenements to one L., which L. gave them in fee tail, &c., as above, and so the estate, if any there was taken from the King, was discontinued ; judgment whether you ought to have aid.—*Thorpe*. You do not show that we have any estate otherwise than as heir, and it is not a plea in aid-prayer to say that your action is lower ; and if we had shown how we had come back to a higher estate, that would have the effect of stopping your action, and then we

## No. 14.

de la chartre et disseisi; et a ceo. qe vous dites qe A.D. 1341. laccion est pris de temps puis la cause del eide prier nous avoms pas a pledre; par quei nous prioms leide. —HILL. Nous tendroms le fet tiel come il allege; et, si sic, nous vous oustroms deide; et sil vous ouste del eide cest en descharge du Roy.—Thorpe. Noun est; qar le Roy perdra donques le marc reserve et son tenant.—HILL. Il moustre qun de voz auncestres se demyst; par quei vostre estat ne poet estre entendu par la chartre.—Thorpe. Ne moustrez pas nostre estat estre autre, et coment nostre auncestre se demyst, qe nous ne conisoms pas, poet estre qele fust deinz age, et rentra, ou recoveri, &c.; jugement, et prioms leide.—HILL. Et autre chose ne volez dire?—Thorpe. Sire, noun.—[HILL.] Nous vous oustoms del eide par agarde.—Et puis quant a ceo qe fust allege danciene demene, al abatement du bref, *Pole*, Fraunk fee, *ut supra*, par le chartre le Roy.—Fencotes. Anciene demene, sanz seo qil soit fraunk fee par la cause avantdite; prest, &c.—*Pole*. Vous ne serrez pas resceu contre la chartre le Roi al averement.—*Blaik*. Il est mys avant par autre, et issi forsqe evidence.—*Et ita* laverement resceu.

§ Henre<sup>1</sup> de Pynkeney porta un forme de doun en descendre **Forme de** vers J. de G., qe dit qe le Roy par cest chartre dona lez **doun.** tenementz a T. sonn auncestre, et pria eide.—*Pole*. Un Gunnore fille et heirs cesti T. vostre auncestre dona les tenementz a un L., le quel L. les dona en fee tailla, &c., *ut supra*, issint lestat, si nul fuit pris du Roy, discontinue; [jugement] si eide devez aver.—*Thorpe*. Vous ne moustres pas qe nous avoms autre estat qe come heir, et ceo nest pas plee en eide prier qe vostre accion est plus basse; et si nous moustrassoms coment nous fuissoms revenuz a lestat de plus haust, ceo serroit arester vostre accion, et donques serroms ouste del

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<sup>1</sup> This report of the case is from L. alone.



## Nos. 15, 16.

A.D. 1341. should be ousted from the aid.—Nevertheless, because he did not dare to say anything else, they were ousted from the aid.—On another *Præcipe* one said that the tenements demanded against him were Ancient Demesne, parcel of the manor of Cookham, &c.—*Pole*. They are parcel of the tenements comprised in the King's charter, which is shown in Court, and so frank fee.—*Thorpe*. That charter is not shown either by you or by us.

Scire  
facias.

(15.) § Note that in a *Scire facias* the Sheriff made his return to the writ in this manner; "Scire feci J. de B. ad essendum coram Justiciariis Domini Regis apud Westmonasterium in xv. Trinitatis per A. et J."—And because he did not return that he had warned the party to do any thing, the return was held to be insufficient, and the Sheriff was amerced in 40s. And if he had said, "ad faciendum quod breve requirit," or "scire feci, &c., secundum tenorem vel formam brevis," it would have been good.

Voucher.

(16.) § Note that, where a man and his wife were vouched, *Derworthy* said:—Neither the husband and his wife nor the ancestors of the wife ever had anything since the seisin.—And *Thorpe* said, He does not counterplead by Statute,<sup>1</sup> unless he say that the ancestors both of the one and of the other never had anything.—*Derworthy*. When a husband and his wife are vouched, it is to be understood that the voucher is by reason of the wife.—*HILLARY*. It is not; for by fine they might have rendered, or given, or warranted; wherefore see whether you will say anything else.—*Derworthy*. Neither the husband nor his wife nor any of their ancestors were ever seised; ready, &c.—And the other side said the contrary.

Voucher.

§ A man and his wife were vouched.—*Ham*. Neither they nor the ancestors of the wife ever had anything since, &c.—*Thorpe*. [He should say] since the seisin of the husband's ancestors, for voucher by Statute. Therefore *Ham*. did not dare to abide judgment, and said that none of their ancestors, &c.

<sup>1</sup> 8 Edw. I. (Westm. I.) c. 40.

## Nos. 15, 16.

eide. — *Tamen*, pur ceo qil ne noseit autre chose dire, il A.D. 1341. furent oustes del eide.—En autre *Præcipe* un dit qe les tenementz vers luy demandez sunt aunciene demene, parcel del manere de Cocham, &c.—*Pole*. Ils sunt parcel des tenementz compris en la chartre le Roy, qest moustre en la Court, issint frank fee.—*Thorpe*. Cele chartre nest pas moustre par vous ne par nous.

(15.)<sup>1</sup> § *Nota* qen un *Scire facias* le Vicounte servy le bref en ceste manere, "Scire feci J. de B. ad essendum coram Justiciariis domini Regis apud Westmonasterium in xv. Trinitatis per A. et J."—Et pur ceo qil ne retourna pas qil ad garny la partie a ascune chose faire, le retourn fust agarde meyns suffiseant, et le Vicounte amercie a xls. Et sil ust dit "ad faciendum quod breva requirit," vel quod "scire feci, &c., secundum tenorem vel formam brevis," ceo ust este bon.

Scire.  
facias.  
[Fitz.  
Retourne  
del Vi-  
count,  
108.]

(16.)<sup>2</sup> § *Nota* qe, ou un homme et sa femme furent vouches, *Derworth*. Et le baron et sa femme ne les auncestres sa femme navoient unques rien puis la seisine.—Et *Thorpe*. Il ne contreplede pas par statut sil ne die qe les auncestres ne lun ne lautre navoient unques rien.—*Derworth*. Quant baroun et la femme sont vouches cest a entendre par cause de la femme.—*HILL*. Non est; qar par fyne il poaynt aver rendu, ou done, ou garranti; par quei veez si vous voillez autre chose dire.—*Derworth*. Le baroun ne la femme ne nul de lour auncestres ne furent unques seisi; prest, &c.—*Et alii e contra*.

§ Un<sup>3</sup> homme et sa femme furent vouches.—*Ham*. Eux ne les auncestres la femme unques navoient rien pus &c.—*Thorpe*. Pus seisine des auncestres le baroun, pur le voucher [par estatut]. Par quei *Ham*. nosa pas demurer, et dit qe nul de lour auncestres, &c.

<sup>1</sup> From T. alone.

<sup>2</sup> From T. alone, as far as the point at which the larger type ends.

<sup>3</sup> This report of the case is from L. alone.

## Nos. 17, 18.

A.D. 1341.  
Præcipe  
quod  
reddat.

(17.) § *Præcipe quod reddat* against an infant under age. And one answered as tenant in wardship (by reason of the nonage of him against whom the writ was brought) by lease from the King of the same land; and he showed the King's patent, and said that he did not think that without the King being consulted, &c. And the infant said for himself that he was in the wardship of the King, and he prayed his age.—*Gayneford*. He does not show any cause for having his age allowed.—*Thorpe*. There is no need for him to show a cause, because, for whatever cause the King may be seised, whether rightfully or wrongfully, the Court will not proceed further; on the other hand the King will have the wardship of his tenant who is under age, howsoever he may have come to it.—*Gayneford*. We say that he is a purchaser, and that our demand is of tenements other than those mentioned in the King's patent.—*HILLARY*. Then sue to the King, that for that reason we may proceed.

Formedon  
in the re-  
mainder.

(18.) § *Formedon*, which Coleville brought in respect of lands that W. gave to D. for her life, remainder after the death of D. to the ancestor of the demandant, and to the heirs which he should beget on the body of his first wife. And he showed that his ancestor was seised after the death of D., the tenant for term of life, and made the descent to himself as son.—*Pole*. Have you anything to show the remainder?—*Rokell*.

Nos. 17, 18.

(17.)<sup>1</sup> § *Præcipe quod reddat* vers un enfant deinz A.D. 1341.  
 age. Et un respondi come tenant en garde, par noun <sup>Præcipe</sup>  
 age mesme celui vers qi le bref est porte, du lees le <sup>quod</sup>  
 Roi de mesme la terre; et moustra la patent le Roi, <sup>reddat.</sup>  
 et dit qil nentendist pas qe le Roi nient conseile, &c.  
 Et lenfant dit pur lui mesme qil est en la garde le Roi,  
 et pria son age.—*Gayn.* Il ne moustre pas cause de  
 son age aver.—*Thorpe.* Il ne besoigne pas qil moustre  
 cause, qar pur queicunqe cause qe le Roi soit seisi, a  
 dreit ou a tort, Court nirra pas pluis avant; dautre  
 part le Roi avera la garde de son tenant deinz age,  
 coment qe il soit avenuz.—*Gayn.* Nous dioms qil  
 est purchaceour, et qe nostre demande est des autres  
 tenementz qe la patent le Roi ne purport.—*HILL.*  
 Suez donques au Roi, qe par cele resoun qe nous  
 puissoms aler avant.

(18.)<sup>2</sup> § *Forme doun*, qe Coleville porta, les queux <sup>Forme de</sup>  
 W. dona a D. a sa vie, et apres la mort D. remeindre <sup>doun en le</sup>  
 al auncestre le demandant, et as heirs queux il engen- <sup>remeindre.</sup>  
 dreit du corps sa primere femme. Et moustra qe son  
 auncestre fust seisi apres la mort D., tenant a terme  
 de vie, et fist la descente a lui come a fitz.—*Pole.*  
 Avez rien del remeindre.—*Rokel.* Il ne covient pas,

<sup>1</sup> From T. alone.

<sup>2</sup> From T. alone, as far as the point at which the larger type ends, but corrected by the record, *Placita de Banco*, Trinity, 15 Edw. III., R<sup>o</sup>. 134. It there appears that the action was brought by John de Coleville, knight, against Simon, Abbot of Ramsey, in respect of 2½ acres of land in Walsoken (Norfolk), "quas Willelmus de Ormysby dedit Desideratæ de Coleville, ita quod post mortem ejusdem Desideratæ prædicta terra Galfrido de Coleville et

" heredibus quos idem Galfridus  
 " de prima uxore sua procrearet  
 " remaneret, et quæ post mor-  
 " tem prædictorum Desideratæ et  
 " Galfridi præfati Johanni filio  
 " et heredi ejusdem Galfridi de  
 " Margeria prima uxore sua pro-  
 " creato descendere debet per  
 " formam donationis prædictæ,"  
 &c. In the count the seisin of  
 Geoffrey (*inter alia*) was alleged.  
 In the plea the Abbot asks that it  
 may be shown to him whether  
 John has any specialty testifying  
 the form of the gift. In the repli-

## No. 19.

A.D. 1341. There is no need, because our ancestor was seised by the form.—HILLARY. Then you have nothing to show.—*Rokell*. I dare abide judgment upon this very safely, since the form was executed in the ancestor.—BASSET. It is not proved that he was seised by virtue of the remainder if you do not show a specialty; for a remainder, which is but a word and a man's will and pleasure, can not be proved except by a specialty; for the possession does not vest in him by the gift.—*Kelshulle*. At common law, in such a case, the issue would have had a Mort d'Ancestor, and by the Statute<sup>1</sup> which gives Formedon he will not be in a worse condition.—BASSET. A Mort d'Ancestor does not make mention of a remainder, and in this case he would have a good writ of remainder notwithstanding the seisin of his ancestor.—*Quære*.

Remainder. § In a Formedon in the Remainder in respect of tenements given to A. for term of her life, remainder to the father of the demandant and his heirs whom he should beget upon the body of his first wife, the demandant counted that his father was seised by virtue of the remainder, the words of the writ were *descenders debet*.—It was asked what he had to show the remainder.—*Rokell*. Since the remainder was executed, the country can have knowledge of that seisin, and if my father may have eloiigned our deed, I ought not to be disinherited through his default, &c.

Continuation of a Quare impedit for the King. (19.) § *Thorpe*. The King took his title for that he was seised of the manor of Cullebache, to which the advowson, &c., by reason of the nonage, &c. To this it was replied, by the defendant, that the infant's ancestor held only at his will, and that he was seised

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<sup>1</sup> 13 Edw. I. (Westm. 2.) c. 1. (*De donis conditionalibus*).

## No. 19.

qar nostre auncestre fust seisi par la forme.—HILL. A.D. 1341. Donques navez rienz.—*Rokel.* Jose demurrer sur ceo moult bien, quant la forme fust execut en launcestre.—BASSET. Il nest pas prove qil fust seisi par remeyndre si vous ne moustrez especialte; qar remeyndre, qe nest forsque parole et volunte domme, ne poet estre prove forsque par especialte; qar possession ne vest pas en lui par le doun.—*Kels.* A la comune ley, en tiel cas, lissu ust ew le mortdauncestre, et par lestatut qe doune forme doun ne serra il pas de pure condicion.—BASS. Mortdaucestre ne fait pas mencion del remeyndre, et en ceo cas il avereit bon bref de remeyndre *non obstante* la seisine son auncestre.—*Quere.*

§ En <sup>1</sup> remeyndre des tenementz donez a A. a terme de sa vie, Remeyndre le remeyndre al pere le demandant et ses heirs qil engendreit dre. del corps sa primere feme, il counta qe soun pere fuit seisi par le remeyndre, et le bref voleit *descendere debet*.—Fait demande qil avoit del remeyndre.—*Rokel.* Del houre qe le remeyndre fuit execut, de cele seisine put la pays conustre, et si mon pere ust aloigne nostre fait, par sa defaute ne deie jeo estre desherite, &c.

(19).<sup>2</sup> § *Thorpe.* Le Roy prist son tittle pur ceo qil fust seisi del manoir de Cullebache, a qi lavoessoun, &c., par le noun age, &c. A qi fust replie, par le defendant, qe launcestre lenfaunt navoit forsque a sa

Residuum  
de un  
Quare  
impedit  
pur le Roy.

cation John says he is ready to verify the gift, and says that ought to be sufficient in this case, since he affirmed seisin of Geoffrey in his count, and the descent was to him, and he prays judgment. "Et Abbas dicit quod ex quo prædictum breve conceptum est super hujusmodi formam donationis in le remanere quod manu teneri debet per specialitatem, &c., petit judicium si ipse præfatus Johanni ad hujusmodi breve

" sine specialitate formam donationis prædictam testante inde respondere debeat, &c. Et, si videatur Curie quod sic, paratus est ad respondendum ea quæ sufficient," &c. There were several adjournments, the last to the Quinzaine of the following Hilary, but the result does not appear.

<sup>1</sup> This report of the case is from L. alone.

<sup>2</sup> From T. alone.

## No. 20.

A.D. 1341. of the manor, and so it belonged to him, &c. And for the King a record was shown in which parcel of the manor was demanded, as being in West Cullebache, against one A., which he warranted as in fee simple; and it was said for the King that the ancestor had the like estate in the residue of the manor as in that parcel, &c. And they were at issue whether that demand was parcel of the manor or not. And now the inquest was taken from the neighbourhood where the gross of the manor is, and not where the parcel is; wherefore, &c.—HILLARY. And so it ought to be; for we will take an inquest only from the neighbourhood mentioned in the writ or the record. And suppose that non-tenure of a manor be alleged in a foreign county, that shall be enquired of by people of the neighbourhood where the manor is.—*Thorpe*. Still we tell you, for the King, that this can not make an issue; for whether the ancestor had or had not anything in the parcel of the manor, perchance he was seised in fee of the residue of the manor, so that the King's title is not yet answered; wherefore you must put him to replead; and so it has been often done with parties other than the King.—HILLARY. The King then chose this issue, and it was pending here for a long time, and then the issue was awarded by the Court, which award we ought to pursue; and the right of the King is saved by another writ.—*Thorpe*. Never except by another title.—And then HILLARY adjudged that Ralph should recover, saving the right of our lord the King.

Error,  
sued for  
the suc-

(20.) § The King had given the wardenship of the chapel of Bedford to one John de Derby; and after-

## No. 20.

volunte, et il est seisi del manoir, et issi appendist a A.D. 1341. lui. Et pur le Roi record fust moustre ou parcelle del manoir fust demande en W. Cullebache vers un A., qil garrantist come de fee simple; et fust dit pur le Roi qe autiel estat avoit launcestre en le remenant del manoir come en cele parcele, &c. Et furent a issu si cele demande fust parcelle ou noun. Et ore lenquest fust pris del visne ou le gros del manoir est, et noun pas ou la parcele est; par quei, &c.—HILL. Auxi duist il estre; qar nous prendoms enquest forsque del visne ou le bref ou le record voet. Et jeo pose qe nountenue dun manoir soit allege en foreyn counte, ceo serra enquis par gentz de visne ou le manoir est.—*Thorpe*. Uncore vous dioms, pur le Roi, qe ceo ne poet faire issu; qar mesqe en le parcele du manoir launcestre avoit ou noun, en le remenant du manoir par cas il fust seisi de fee, issi qe le tittle le Roi nest pas uncore respondu; par quei il covient qe vous le mettes a repleder; et issi ad este sovent fait en autres persones qe le Roi.—HILL. Le Roi eleust adonques cest issue, et issi pendit longement, et puis lissu fust agarde par Court, quele agarde nous covient pursuyr; et le dreit le Roi est saufve par autre bref.—*Thorpe*. Jammes forsque par autre tittle.—Et puis HILL. agarda qe Rauf recoverist, *salvo jure domini Regis*.

(20.)<sup>1</sup> § Le Roi avoit done la garde de la chapele de Bedeford a un John de Derby; et puis un Johan de

Errour  
suwy pur  
le succes-

<sup>1</sup> From T. alone, as far as the point at which the larger type ends. The proceedings in the assise in which error is here assigned are reported Y. B., T., 13 E. 3, No. 60, and an abstract of the records is given in the Introduction to the volume in which the report is printed, pp. xciv.-c.

The proceedings in Error are assigned to different terms in different reports, but the judgment was not actually reversed until Michaelmas Term, 15 Edw. III., as appears by the record, *Placita coram Rege*, Michaelmas, 15 Edw. III., R. 185. That, however, is explained in the report here printed from T.



## No. 20.

A.D. 1341. wards one John de Boddenho brought an assise of Novel  
cessor on Disseisin against the same John de Derby, and made  
a judg- his plaint for a messuage, land, and rent, pending  
ment given which assise, he who held by the King's collation re-  
against his signed to the King, and the King gave to one William  
predeces- de Abberbury. Afterwards the assise passed for the  
sor in plaintiff, and he recovered, and by the execution he  
respect of who came in pending the writ was ousted; wherefore  
the chapel for himself and the King he brought a writ of Error  
of Bedford. as successor. And he assigned error for that the  
tenant was not named warden, and also for that it  
was alleged that the King, pending the writ, was seised  
by virtue of the resignation, and that by his seisin  
the writ was abated, &c. And the writ by which  
the tenant is now warned to hear the errors stated  
all the case.—*Pole*. This person can not be heard  
to assign error; for you see clearly how he had not  
any estate except pending our assise, and so by our  
recovery he lost the principal matter, by reason of  
which he is supposed to have been warden; for he  
against whom our writ was brought was by law always  
tenant, pending our suit, notwithstanding the resigna-  
tion, and he lost, so the estate of this person is of no  
account.—*Thorpe*. This person was successor by course  
of law until he was ousted by that erroneous judg-  
ment; and also the King was ousted from the patronage  
by that judgment; so, as well for him as for the King, the  
writ lies. And suppose that a writ be brought against  
a parson of a church, or an Abbot, or a Prior, in respect  
of land which is the right of his church, and he, pend-  
ing the writ, be deprived or divest himself, still the  
writ remains good against him who was tenant; and  
if another person be made the parson, or Abbot, or  
Prior, and then judgment be given for the demandant,  
shall not the successor have Error, or Attaint, although  
his estate began pending the writ against the prede-

## No. 20.

Boddenho<sup>1</sup> porta assise de novele disseisine vers mesme celui J. de Derby, pur mesuage, terre, et rente fist sa plainte, pendant quele assise, celui qe tient de la colacion le Roi resigna au Roi, et le Roi dona a un William de Abberbury.<sup>2</sup> Puis lassise passa pur le pleintif, et il recoverist, et par lexecucion celui qavient pendant le bref fust ouste; par quei pur lui et le Roi porta bref derroure come successour. Et assigna erroir de ceo qe le tenant ne fust pas nome gardein, et auxi de ceo qe allege fust que le Roi, pendant le bref, fust seisi par le resignement, par qi seisine le bref fust abatu, &c. Et le bref par quel le tenant est ore garny doier les erroirs comprist<sup>3</sup> tout le cas.—*Pole*. Celui ne poet estre escote dassigner erroir; qar vous veez bien coment il navoit nul estat forsque pendant nostre assise, issi par nostre recoverir il perdy le gros, par resoun de quel il duist estre gardeyn; qar celui vers qi nostre bref est porte par ley, pendant nostre suyte, tout temps fust tenant, *non obstante* le resignement, le quel perdy, issi lestat celui nul acont.—*Thorpe*. Cestui fust successour par cours de ley tanqil fust ouste par ceo jugement erroigne; et auxi le Roi ouste del avowere par ceo jugement; issi, quei pur lui quei pur le Roi, le bref gist. Jeo pose que bref soit porte vers persone deglise, ou Abbe, ou Priour, de terre qest de dreit de sa eglise, et il, pendant le bref, soit prive ou soi demet, uncore le bref demoert bon vers celui qe fust tenant; et si autre soit fait persone, Abbe, ou Priour, et puis le jugement se fait pur le demandant, navera le successour erroir, ou atteint, tout fust son estat comence pendant le bref vers le

A.D. 1341.  
sour de  
jugement  
taille vers  
son prede-  
cessour de  
la chapel  
de Bede-  
ford.  
[Fitz.  
Error,  
7; 15 Li.  
Ass., 8.]

<sup>1</sup> T., Codenho.

<sup>2</sup> T., Abrabery, instead of de Abberbury.

<sup>3</sup> T., y prist.

## No. 20.

A.D. 1341. cessor?—*Pole*. In that case he remains successor, but he is not successor in this case, where all was recovered which could make him to be warden.—*Blak*. If a man have a prebend, and all his prebend be in one manor, and a writ be brought against him in respect of the manor, and he lose, and then another be made prebendary, as may be, for the stall and place in the chapter remain, will you not say that he may have a writ of Error on the judgment given against his predecessor? And so in this case the name of warden remained to him, since he was warden before the judgment, and by the writ he was not named warden.—*Pole*. Surely he lost the name when he lost that which would give him the name; and by law when he was a disseisor he should not be named warden. Besides, this W. Abberbury answered for that John de Derby and pleaded for him (as for tenant by bailiff), so that he can not say that he himself was then tenant when he pleaded for another.—*Thorpe*. He can do so; even though he had answered as the other's attorney, he could say that he was then tenant (and especially in this case, since by law he was tenant to that writ), although the truth were in fact otherwise.—*Scor*. Will you say anything else?—*Pole*. Yes, if you award that he shall be answered as to this suit.—*Scor*. Answer if you will, for we shall make no award; and if you do not answer we shall foreclose you from answering, and shall proceed with the errors.—*Pole*. If I bring a writ against you, and, pending my writ, you aliene, and afterwards I recover, and the purchaser be ousted by execution, he shall never have Error or Attaint; no more in this case, &c. And as to the King, nothing is lost to him by the judgment, if he have right; for when the estate of John Derby was found to be by disseisin, and thereupon judgment was given, it can not be understood

## No. 20.

predecessour?—*Pole*. La demoert il successour, mes A.D. 1341. il nest pas successour en ceo cas, ou tout fust recoveri qe lui freit estre gardein.—*Blaik*. Si un homme eit une provandre, et toute sa provandre soit en un manoir, et bref soit porte devers lui du manoir, et il perd, et puis un autre soit fait provandrer, come poet estre, qar lestalle et le lieu en chapitre demoert, ne volez dire qil poet aver bref derrouer del jugement taille vers son predecessour? Et auxi en ceo cas noun de gardein lui demora, del heure qil fust gardein avant le jugement, et par le bref il ne fust pas nome gardein.—*Pole*. Certes il perdist le noun quant il perdist ceo qe lui durreit le noun; et de ley quant il fust disseisour il ne serreit pas nome gardein. Ovesqe ceo, celui W. Abberbury<sup>1</sup> respondi pur celui Johan de Derby et pleda pur lui, come pur tenant par baillif, issi qil ne poet dire qil mesme adonques fust tenant quant il respondi pur autre.—*Thorpe*. Si poet il; tout ust il respondu come son attourne, il purra dire qil mesme adonques fust tenant, et nomement en ceo cas, del heure qe par ley il fust tenant a cel bref, tout fust la verite autre en fet.—*Scot*. Voles autre chose dire?—*Pole*. Si vous agardez qil serra respondu a cele suyte.—*Scot*. Respondez si vous voillez, qar nous feroms nul agard; et si vous ne responez nous vous forcloroms de respons, et irroms autrement des erreurs.—*Pole*.<sup>2</sup> Si jeo porte bref vers vous, et pendant moun bref vous alienes, et puis jeo recovers, et le purchaceour soit ouste par execucion, il navera jammes errour et atteint; nient pluis en ceo cas, &c. Et quant a R., rien depiert a lui, sil eit dreit, par le jugement; qar quant lestat Johan Derby fust trove par disseisine, et sur ceo jugement fust rendu, il

<sup>1</sup> T., Abrebery.| <sup>2</sup> T., *Blaik*.

## No. 20.

A.D. 1341. that by that judgment the King can be damaged.—

*Blaik.* He who purchases while a writ is pending against his feoffor does not come in by course of law, but by his own act; wherefore he shall not have a suit to defeat the judgment; but when a writ is brought against a Prior or warden, and he resigns while the writ is pending, although the writ be good afterwards against him, still by law the patron, in whom there is by law no default in respect of the divestment, shall give to another, and he who receives has by course of law; wherefore there is a difference between him and a purchaser; and the King is also out of the patronage in this case, the judgment standing in force against him who held of the King's collation; and by the record it is expressly proved that John de Boddenho, the plaintiff in the assise, claimed the chapel and the wardenship on collation by the Burgesses of Bedford, in which case the Court, as it seems, might have abated the writ, because in the assise he did not call himself warden, and we have regard to that, and no one but the successor can have the suit.—*Pole.* What of that? If an erroneous judgment be given against a bastard who dies without heir of his body, no one shall redress it; nor here.—*SCOT.* You say that he lost all by the judgment; it may be that there are still 100*l.* of land of which recovery was not had, and in respect of which he may be successor.—*Pole.* Let him then say so.—*SCOT.* In the assise it was alleged that John de Derby held a messuage, as the chapel of Bedford, by the King's collation, and the residue put in view was appendant to the chapel, and he prayed aid of the King; and John de Boddenho, being questioned whether that was so, did not deny it; therefore he was told to sue to the King; and he sued to the King, and purchased a writ rehearsing how this was

## No. 20.

ne poet estre entendu qe par cele jugement le Roi poet A.D. 1341.  
estre en damage.—*Blaik.* Celui qe purchace pendant  
bref vers son feffour il navient par cours de ley mes de  
son fet demene ; par quei il navera pas suyte de defaire<sup>1</sup>  
le jugement ; mes quant bref est porte vers Priour ou  
gardein, et il resigne pendant le bref, coment qe le bref  
soit bon apres vers lui, uncore le patron, en qi default  
nest pas de la demyse par ley, il durra a autre, et celui  
qe resceit avoit par cours de ley ; par quei il est autre  
de lui qe de purchaceour ; et le Roi est auxi hors de  
patronage en ceo cas, esteant le jugement en sa force  
contre celui qe tient de sa collacion ; et par le record  
est prove expressement qe Johan de Boddenho,<sup>2</sup> pleintif  
en lassise, clama le chapele et la garde de la collacion  
les Burgeys de Bedeford, en quel cas Court, a ceo qe  
semble, poet aver abatu le bref, pur ceo qil se noma  
pas en lassise gardein, et a ceo avoms regard, et nul  
autre poet aver la suyte si lui noun.—*Pole.* De ceo  
quei ? Si jugement erroigne se face vers bastard qe devie  
sanz heir de son corps, nul homme le redresera ; *neque*  
*hic.*—*Scot.* Vous dites qil perdist tout par le juge-  
ment ; poet estre qil y<sup>3</sup> ad uncore c. livres de terre dont  
le recoverir ne se fist pas, de quei il poet estre suc-  
cessour.—*Pole.* Dy cela donques.—*Scot.* En lassise fust  
allege qe Johan de Derby qil tient un mesuage, come  
la chapele de Bedeford, de la collacion le Roi, et qe le  
remenant mys en vew fust apendant a la chapele, et  
pria eide du Roi ; et Johan de Boddenho<sup>3</sup> appose sil  
fust issi<sup>4</sup> il le dedist pas ; par quei il fust dit a lui qil  
suyssyst au Roi ; et il suyssyst au Roi, et purchacea bref  
reherceant coment ceo fust la chapele de Bedeford et

<sup>1</sup> T., faire.<sup>2</sup> T., Dodoulp.<sup>3</sup> T., n.<sup>4</sup> T., issu.

## No. 20.

A.D. 1341. the chapel of Bedford, and that he had it by the collation of the Burgesses of Bedford, so that thereby he sufficiently supposed it to be perpetual, and so he ought in the original to have been named warden; wherefore by his non-denial when he was questioned whether it was the chapel, and also by his suit afterwards which he made as warden, and also when the same thing was found by verdict, the writ ought to have abated, and this is assigned for error. And it is also assigned for error that the Justices proceeded to take the assise for John Boddenho, clerk, when the writ which came to them was for the warden of the chapel, &c.; and therefore move the Court, if you will, as to the errors, for we adjudge that the plaintiff in error may be party to assign the errors; and because you (the defendant in error) have abode judgment, you are foreclosed from saying anything for yourself. — And afterwards, because the writ varied from the record and matter was wanting therein, William Abberbury was told to sue another writ.—And note, that if the writ had been good, the judgment on the assise would have been reversed immediately.—And note, that the Court ought on verdict to abate a writ when it is found false, even though the party would not challenge it, according to what was said in this plea. *Quære*.— And afterwards Abberbury sued another *Scire facias*, and was nonsuited.—And afterwards, in Michaelmas term, Abberbury sued another *Scire facias*, and the errors were assigned as above.—SCOT rehearsed the errors, and took for judgment that the Justices ought, on the verdict, and also inasmuch as he who sued the assise made himself warden by the writ for proceeding to judgment, and in the original was not so named, to have abated the writ and did not; and (said he) for that and the other errors in the same record we annul the judgment, &c.

## No. 20.

qil lavoit de la collacion les Burgeys de Bedeford, issi A.D. 1341. qe par tant assetz le supposa il estre perpetuel, et issi duist il aver este nome en loriginal gardein; par quei son nient dedire quant il fust apose sil fust la chapele, et auxi par sa suyte apres quele il fist come gardein, et auxi sur verdit mesme la chose trove, le bref se duist aver abatu, et cest assigne pur erreur. Et auxi qe Justices alerent avant a prendre assise pur Johan Boddenho,<sup>1</sup> clerc; ou le bref qe lour vient fust pur le gardein de la chapele, &c.; et pur ceo movetz la Court si vous voillez quant as erreurs, qar nous agardoms qil poet estre partie dassigner les erreurs; et pur ceo qe vous avez attendu jugement vous estes forclos pur vous mesmes a rien dire.—Et puis, pur ceo le bref fust variant al record et matere y faillist, dit a William Abberbury<sup>2</sup> qil suyst autre bref.—*Et nota*, si le bref ust este bon, le jugement sur lassise ust este reverse tantost.—*Et nota*, qe Court duist sur verdit abatre bref quant il est trove faux, tout ne voleit partie challenger, a ceo qe fust dit en ceo plee. *Quære*.—Et puis Abberbury<sup>3</sup> suyst autre *Scire facias*, et fust nounsuy.—*Et postea termino Michaelis* Abberbury<sup>3</sup> suyst autre *Scire facias*, et les erreurs asseignez *ut supra*.—SCOT rehercea les erreurs, et prist pur jugement qe les Justices sur verdit, et auxi par tant qe celui qe suyst lassise se<sup>3</sup> fist gardein par le bref *de procedendo ad judicium* [et] en loriginal il ne fust pas nome tiel, ou il duissent aver abatu le bref et ne firent pas; et pur cel et autres erreurs en mesme le record nous anientoms le jugement, &c.<sup>4</sup>

<sup>1</sup> T., Dodoulp.<sup>2</sup> T., Abrebey.<sup>3</sup> T., ne.

<sup>4</sup> The reversal of judgment appears on the roll (*Placita coram Rege*, Michaelmas, 15 Edw. III., R<sup>o</sup>. 186) as follows:—"Et quia, "visis et diligenter examinatis

"recordo et processu prædictis,

"comptum est in eisdem quod

"prædictas Johannes de Boddenho

"non dedixit quin unum mesua-

"gium de tenementis prædictis,

"unde idem Johannes de Bodden-

"ho, &amp;c., questus fuit disceisiri, fuit

"Capella Sancti Thomas Martyris



## No. 20.

A.D. 1841. § William de Abberbury, clerk, caused to come into the Assise of Novel Disseisin. King's Bench the record of an assise of Novel Disseisin which J. de Boddenho, chaplain, brought against J. de Derby and others before SCHARDELOWE and his fellows, in which the plaint was made in respect of a messuage and certain land, and in which J. de Derby answered as tenant, and said that the messuage was the chapel of Bedford, and that the land was annexed to the same chapel, and showed that he held the chapel for term of life by the King's collation, and prayed aid of the King, and had it. And afterwards there was a writ to the Justices to proceed in the plea, at which time came W. de Abberbury, clerk, and brought a writ to the Justices rehearsing how J. Derby had resigned, and the King had made collation to the said W., and directing the Justices that (having regard to the resignation and to the King's seisin, and to the collation made to W.) they should do that which was according to law. On the day given J. Derby named

" super pontem Bedefordie situ-  
 " ata, et aliud mesuagium, et  
 " shopæ, terra, et redditus fuerunt  
 " de pertinentiis ejusdem Capellæ,  
 " cum inde per Curiam, &c., fuerat  
 " quesitus, ita quod Curia tunc illud  
 " tenuit ab eodem Johanne non  
 " deductum, compertum est etiam  
 " in eisdem recordo et processu  
 " quod, postquam dictum fuit præ-  
 " fato Johanni de Boddenho quod  
 " sequeretur versus dominum Re-  
 " gem si, &c., ex quo per prædic-  
 " tum Johannem de Boddenho  
 " allegatum fuit quod ipse habuit  
 " Capellam prædictam ex colla-  
 " tione domini Regis nunc et  
 " litteras domini Regis inde pro-  
 " tulit, &c., et quod assisa præ-  
 " dicta postea remansit sine die,  
 " &c., prout in eisdem continetur,  
 " &c., prædictus Johannes de Bod-  
 " denho tulit præfatis Justiciariis  
 " ad assisas, &c., quoddam breve  
 " domini Regis de procedendo ad  
 " captionem assisæ prædictæ, per  
 " quod breve idem Johannes de

" Boddenho asseruit se habuisse  
 " custodiam Capellæ prædictæ ex  
 " collatione Majoris et ballivorum  
 " Bedefordie, et non est com-  
 " pertum in eisdem recordo et  
 " processu quod prædictus Jo-  
 " hannes de Boddenho per breve  
 " assisæ novæ disseisinæ quod  
 " tulit inde non se fecit nominari  
 " persona dictæ Capellæ neque  
 " custos ejusdem nec aliquod aliud  
 " allegavit pro brevi illo manute-  
 " nendo, ex quo ipse non dedit  
 " quin unum mesuagium de tene-  
 " mentis unde ipse querebatur se  
 " disseisiri fuit Capella prædicta,  
 " et aliud mesuagium, shopæ, terræ,  
 " et redditus in visu posita fuerant  
 " de pertinentiis ejusdem Capellæ,  
 " quod necessario, per legem  
 " Angliæ, requireretur si breve  
 " illud in hoc casu deberet manu-  
 " teneri, per quod videtur Curie  
 " hic quod præfati Justiciarii ad  
 " prædictam assisam capiendam  
 " assignati tam in hoc quod præ-  
 " dictum breve assisæ novæ dis-

## No. 20.

§ William<sup>1</sup> de Abberbury,<sup>2</sup> clerk, fit venir en Baunk le Roy A.D. 1341. le record dune assise de novele disseisine qe J. de Boddenho,<sup>3</sup> Assise de chapelein, porta vers J. de Derby et autres devant SCHAR. et novele disseisine. et ses compaignons, ou la pleynte fuit fait dune mies et certain terre, ou J. de Derby respondi com tenant, et dit qe le mies fut chapele de Bedforth, et la terre fuit annex a mesme la chapele, et moustra il tyent la chapele a terme de vie par collacion de Roy, et pria eide de Roy, *et habuit*. Et puis bref a les Justices daler avant en la plee, a quel temps vynt W. de Abberbury,<sup>2</sup> clero, et porta bref as Justices reherceant coment J. Derby avoit resigne, qe le Roy avoit fait collacion al dit [W.], maunda as Justices qe, eiaunt regard a le resignement et a la seisine le Roy et a le collacion fait a W., feissent oeo qe a la ley atteynt; quel jour J. Derhy nome en bref fiat<sup>4</sup>;

"seisinae ad tunc non cassaverunt,  
 "immo placitum ulterius super  
 "eodem brevi tenuerunt, et postea  
 "ad iudicium super eodem red-  
 "dendum processerunt, quam in  
 "hoc quod ad captionem assise  
 "predictae processerunt, per præ-  
 "dictum breve quod idem Jo-  
 "hannes de Boddenho postea  
 "tulit præfatis Justiciariis ad assi-  
 "sas, &c., de procedendo [ad] cap-  
 "tionem ejusdem assise, per quod  
 "breve idem Johannes de Bod-  
 "denho asseruit, se habuisse cus-  
 "todiam Capellæ predictæ ex  
 "collatione Majoris et ballivor-  
 "um Bedefordie, supponendo se  
 "esse custodem ejusdem capellæ,  
 "ubi ipse non nominabatur custos  
 "in prædicto brevi originali, quod  
 "breve non warrantizabatur su-  
 "per brevi originali, et ubi ali-  
 "quod aliud warrantum non habue-  
 "runt procedendi ad captionem  
 "ejusdem assise, manifeste erra-  
 "verunt, Ideo, ob errores illos  
 "et alios in recordo et processu  
 "predictis et in iudicio inde  
 "reddito compertos, consideratum  
 "est quod recordum et processus

"predicta necnon iudicium inde  
 "redditum tanquam erronea ad-  
 "nullentur, revocentur, et pro nul-  
 "lo habeantur, et quod dominus  
 "Rex habeat collationem capellæ  
 "predictæ." Abberbury was to  
 have possession again, and the  
 issues mesne between the judgment  
 and the reversal. Writs issued to  
 the Sheriff to give Abberbury such  
 possession as he had by virtue of  
 the King's "collation" before the  
 judgment, and to enquire how  
 much the chapel, &c., were worth  
*per annum*. The Inquisition sent  
 in return appears at length on the  
 roll. Execution was (after some  
 delay) awarded, and the Bishop of  
 Exeter was directed to effect it, so  
 far as the damages were concerned,  
 by *fi. fa.*, Boddenho having no  
 lay fee or goods or chattels in  
 the Sheriff's bailiwick.

<sup>1</sup> This report of the case is from  
 L. alone, in which MS. it appears  
 as of Easter Term next preceding.

<sup>2</sup> L., B.

<sup>3</sup> L., Haudehake.

<sup>4</sup> The MS. is here obviously cor-  
 rupt or defective.

## No. 21.

A.D. 1341. in the writ made . . . ; and therefore the Justices took the assise.

It was found by the Assise that J. de Boddendo, plaintiff, was seised by collation of the Mayor and Burgesses of Bedford as of freehold, and that the collation to the chapel belonged to the Mayor and Burgesses and not to the King. And thereupon the parties were adjourned into the Bench, where it was adjudged that the plaintiff should recover, &c.—In the King's Bench it was assigned for error that it was found by verdict of assise, and also by admission of the party impleaded, that it was a chapel which was in demand, and that the plaintiff's estate was by collation, in which case he ought to have been named warden in his writ, and so his writ was abatable in law, and therefore the Justices who gave judgment for him on such a writ erred. Further, the Assise found that the chapel was of the collation of the Mayor and Burgesses and not of the right of the King, and thereupon the Justices delivered judgment, ousting the King from his patronage, whereas they ought to have made search in the Treasury in order to know the King's right, and therein they erred.—*Pole*. This suit does not rightly belong to you, for you are a stranger to the record.—*Thorpe*. We are successor by virtue of the resignation, and of the King's collation, and this estate we lost through the execution of this judgment; besides, we are for the King and for ourselves.—*Pole*. The King's recovery is saved in another way.—*Thorpe*. The King was prayed in aid, and so a party, &c.

Error on a  
Scire  
facias upon  
a writ of  
Mesne.

(21.) § Gerard Braybroke brought a writ of Error on the *Scire facias* against him by the Abbot of Woburn on a judgment given on a writ of Mesne against J., his ancestor, as appears in the 14th year.

## No. 21.

par quei les Justices pristrent assise, par quel fuit trove qe A.D. 1341. J. de B.,<sup>1</sup> pleintif, fuit seisi par collacion le Mier et Burges de Bedforth com de franktenement, et qe la collacion de la chapele appent al Mier et as Burges et neynt al Roy. Et sour ceo les parties ajournes en Baunk, ou fuit agarde qe le pleyntif recoverast, &c.—En Baunk le Roy fu assigne pur erreur de ceo qe trove fuit par verdit dassise, et auxi par conisance de partie enplede, qe ceo fuit chapele, et lestat le pleyntif par collacion, ou soun bref il dust aver este nome gardein, issint son bref abatable en ley, par quei les Justices qe donerent jugement pur ly sour tiel bref errerent. Estre ceo, ils troverent qe la chapelle fuit de la collacion le Mier et les Burges et nyent del droit le Roy, et sur ceo rendirent jugement, en oustant le Roy del avoweson, ou ils duissent aver fait serche en Tresorie pur le droit le Roy saver, et en tant ererent.—*Pole*. A vous nattient pas ceste suyte, qar vous estes estrange a record.—*Thorpe*. Nous sumes successeur par resignement, et par collacion du Roy, et cele estat perdismes par execucion de cele jugement; estre ceo, nous sumes pur le Roy et pur nos mesmes.—*Pole*. Le recoverir le Roy est salve par autre voie.—*Thorpe*. Le Roy fuit prie en eide, issint partie, &c.

(21.)<sup>2</sup> § Gerard Braybroke porta bref derrouer sur le *Scire facias* vers lui par labbe de Wouburne sur un jugement qe se tailla sur un bref de mene vers J., son auncestre, come piert anno xiiij<sup>o</sup>. Et assigna pur

Errour en un Scire facias sur un bref de mene.  
[15 Li. Ass., 9.]

<sup>1</sup> L., H.

<sup>2</sup> From T. alone. The *Sci. fa.* on which a writ of Error was sued is reported Y. B., H., 14 E. 3., No. 18 and No. 19. The record of the proceedings in Error as here reported is among the *Placita coram Rege*, Trin., 15 Edw. III., R<sup>o</sup>. 28. It there appears that the plaintiff in error, Gerard son of Gerard de Braybroke, assigned errors as follows:—(1) In that the Justices of the Common Pleas gave judgment that execution should be had on the writ of *Sci. fa.*, "quod " breve warantizari debuit de quo-

" dam recordo in quo non extitit  
" consideratum per judicium quod  
" prædictus Johannes avus præ-  
" dicti Gerardi acquietaret prædic-  
" tum tunc Abbatem." (2) "Quod  
" prædicta acquietantia recognita  
" fuit per prædictum Johannem  
" de Braybroke prætextu cujusdam  
" chartæ quæ in placito super  
" prædicto brevi de *Scire facias*  
" non extitit ostensa, prout patet  
" in recordo et processu prædictis,  
" ita quod præfati Justiciarii, &c.,  
" non potuerunt scire quod here-  
" des prædicti Johannis de Bray-  
" broke extiterunt ligati ad ac-

## No. 22.

A.D. 1341. And he assigned for error that the *Scire facias* which issued was not warranted by any judgment; for on the writ of Mesne no judgment was given on the acquittal of services. Another error assigned was that in the writ of Mesne his ancestor was charged and bound to the acquittal by force of a specialty, which was not shown in the *Scire facias*, so that the Court can not know whether the charge well extended to the heirs or not. The third error was that he offered to aver in the *Scire facias* that he had nothing by descent in fee simple, and that without having regard thereto they adjudged him to acquit, &c. And, because the errors touched the first judgment, he waived, &c.

Error on a  
judgment  
on a writ of  
Mesne.

(22.) § Gerard [de Braybroke] sued the first record on the writ of Mesne by way of Error, and he assigned for error that the party was attached, whereas by law

" quietandum prædictum Abbatem,  
" &c., necne," and so in giving  
judgment of execution without  
seeing the *charta* they erred.  
(3) " Quod prædictus Johannes  
" de Braybroke, antecessor præ-  
" dicti Gerardi, cognovit prædic-  
" tam acquietantiam, &c., prætextu  
" cujusdam chartæ quæ non fuit  
" nisi conventionalis inter dictum  
" Johannem et tunc Abbatem, &c.,  
" et per legem terræ heres alicujus  
" non debet ligari per conven-  
" tionem antecessoris sui nisi in  
" tantum quod ei descenderet in  
" feodo simplici, et prædictus  
" Gerardus prætendit verificare  
" quod ipse nihil habuit per de-  
" scensum hereditarium in feodo  
" simplici et similiter dixit quod Ab-  
" bas tunc tenuit eadem tenementa  
" de prædictis Alicia Ledece et

" Christiana sorore ejusdem Aliciæ,  
" et sic in hoc quod præfati Justi-  
" cii amoverunt prædictum Ge-  
" rardum de eadem verificatione  
" ex quo nihil ei descendebat, &c.,  
" erraverunt." The Bishop's join-  
der in Error was as follows:— (1)  
" Per hoc non est erratum, quia  
" dicit quod in primo recordo satis  
" continetur, &c., in eo quod con-  
" sideratum fuit quod prædictus  
" Johannes de Braybroke distrin-  
" geretur ad prædictum Abbatem  
" tunc acquietandum, &c., et talia  
" fuerunt judicia in hujusmodi  
" placitis ad tunc et diu postea,  
" et cum hoc dicit quod prædictus  
" Johannes tunc cognovit quod  
" ipse acquietare deberet prædic-  
" tum tunc Abbatem, &c., et per  
" statutum, &c., super acquietantiam  
" in Curia, quæ est de recordo re-

## No. 22.

erreur de ceo qe le *Scire facias* qe issit ne fust pas A.D. 1341. garranti de nul jugement; qar en le bref de mene nul jugement se fist sur lacquittance. Autre erreur de ceo qen le bref de mene son auncestre fust charge et lie al acquittance par force dun especialte, quel en le *Scire facias* ne fust pas moustre, issi qe Court ne poet pas saver qe lien sestendist a ses heirs ou noun. Le terce erreur de ceo qil tendist daverer en le *Scire fucias* qil navoit rien par descende en fee simple, saunz aver regard a ceo il lui ajugerent dacquiter, &c. Et, pur ceo qe les erreurs toucherent le primer jugement, il weyva, &c.

(22.)<sup>1</sup> § Gerard suyst le primer record en le bref de mene par voie derroure, et assigna pur erreur qe la partie fust attache, ou par ley il serreit primes

Erreur sur un jugement en bref de men.

"cognita, conceditur breve de *Scire facias* quamvis iudicium inde redditum sic extitisset." (2) "In hoc non est erratum, &c., quia dicit quod in prædicto brevi de *Scire facias* continetur quod Abbas tunc, &c., tenuit de prædicto Johanne in liberam, puram, et perpetuam elemosynam, quæ tenentia non potest judicari nisi perpetua, et sic, quamvis eadem charta non esset proposita, prædicta tenentia perpetua fuit causa sufficiens habendi acquietiam prædictam, &c." (3) "In hoc non erraverunt quia dicit quod prædictus Gerardus non dedixit quin ipse fuit medius, &c., et aliter breve illud non jacuisset versus eum, nec ipse Gerardus dedixit quin prædictum dominium ei descendit, eo quod huiusmodi dominium a sanguine devolvi aut in alia persona transferri non potest, et sic ex quo

"prædictus Gerardus præmissa non dedixit nec ea potuit dedicere, licet voluisset, et prædicti Justiciarii ipsum Gerardum de prædicta verificatione amoverunt et ipsum ad acquietandum prædictum Abbatem consideraverunt, rite et legitime fecerunt, et non erraverunt." The Bishop therefore prays affirmance of the judgment. Several adjournments followed, but the result is not shown on this roll. In the record, however, of the proceedings in Error, next below (No. 23), there is a recital of the affirmance of judgment on this writ of Error.

<sup>1</sup> From T. alone. The record is among the *Placita coram Rege*, Trinity, 15 Edw. III., R<sup>o</sup> 145. It commences with a *Mittimus* to the King's Bench (following a *Certiorari* to the Chancery) of the record and process (in the Common Pleas) of the case of the Abbot of Woburn

## No. 22.

A.D. 1341. he should have been summoned first; and also that there was no judgment in accordance with law, in as much as he was distrained to acquit, whereas no acquittal of services was adjudged; and also (said he) you will find that the inquest was taken in the absence of parties, for the record does not make mention that the parties appeared; moreover, you will find that the process was discontinued, for the parties had a day, whereas the record does not mention what was done on the day.—*Pole*. You shall not be answered as to this suit; for you have sued to reverse the execution which was adjudged on a *Scire facias* upon this record; and so you have affirmed this first judgment to be good.—*Blaik*. Perhaps there is error in both.—*Pole*. Then he ought to have commenced by reversing the first judgment, and by the reversal of that the judgment in the *Scire facias* would be

v. John de Braybroke (Trin. 7 Ed. I.). A transcript of that record follows. The Abbot had, in the Court of Common Pleas, alleged that John was mesne between him and the King, and was bound to acquit by a deed produced, and that the King had distrained him for one bowl of honey *per annum*. John acknowledged that he ought to acquit by the deed, but said the Abbot had not been distrained as alleged. Issue was joined on this point. The jury found that the Abbot had been distrained as alleged. “Et ideo consideratum est quod prædictus Abbas recuperet prædicta damna sua versus prædictum Johannem. Et Johannes in misericordia. Et præceptum est Vicecomiti quod distringat prædictum Johannem ad acquietandum prædictum Abbatem de cætero de

“prædicta bolla mellis versus dominum Regem.” Then follows (on the K. B. Roll 145, as above):—  
 “Postea, ad sectam prædicti Gerardii de Braybroke, consanguinei et heredis prædicti Johannis, asserentis errores in recordo et processu loquelæ prædictæ intervenisse, præceptum fuit Vicecomiti Buckinghami quod per probos, &c., scire faceret Abbati de Woburne qui nunc est quod esset coram domino Rege ad hunc diem, scilicet a die Sancti Johannis Baptistæ in xv. dies, ubicumque, &c., auditurus recordum et processum prædicta si, &c., et ulterius, &c.” On the appearance of the parties in the K. B., the Abbot produced the King’s writ close to the Treasurer and Chamberlains of the Exchequer, reciting the *Certiorari* and

No. 22.

somons; et auxi qil ny avoit pas jugement acordant a A.D. 1341. la ley, saver, en tant qil fust destreint dacquiter, la ou nul acquittance fust ajuge; et auxi vous trouverez qe lenquest fust pris sanz parties, qar le record ne fait pas mencion qe les parties y furent; outre ceo, vous trouverez qe le proces fust discontinue, qar parties avoint un jour, ou le record ne fait pas mencion de ceo qe fust fait al journe.—*Pole*. A ceste suyte ne serrez vous respondu; qar vous avez suy de reverser lexecucion quele fust agarde sur un *Scire facias* hors de ceo record; issi avez affirme ceo primer jugement bon.—*Blaik*. Poet estre qil ad erreur en lun et lautre.—*Pole*. Donques duist il aver comence de reverser le primer jugement, et par reversement de cel le jugement en le *Scire facias* serreit defait, ou autrement

*Mittimus*, and continuing thus:—

“Ac, in recordo et processu prædictis per vos . . . missis et coram Willelmo Scot, &c. . . . residentibus, quædam particule in negotio prædicto necessarie omisse fuerunt, ac expediens sit . . . quod præfati Justiciarii nostri super toto negotio prædicto plene et integraliter certientur, vobis mandamus quod, scrutatis rotulis præfati Thomæ [de Weylond C. J., C. P.] de tempore prædicto qui sunt in Thesauraria nostra sub custodia vestra, ut dicitur, omne illud quod inveniri contigerit quod nondum est missum . . . distincte et aperte, plene et integre, absque aliqua omissione in hac parte facienda præfatis Justiciariis nostris sine dilatione mittatis.” The Treasurer, &c., therefore send “par-

“non mittebatur hic in hæc verba.”

Here follows John de Braybroke's essoin. Gerard then assigns errors as follows:—(1) “Quod in recordo prædicto continetur quod Johannes de Braybroke attachiatus fuit ad respondendum Abbati de Wouburne, de placito prædicto, ubi breve de quo recordum prædictum sumpsit exordium incipiebat:—‘Summoneas Abbatem, &c.,’ ubi modus est in hujusmodi placitis, cum defendens placitaverit, quod placitum illud debet incipere ‘talis summonitus fuit, &c.,’ et sic in hoc quod recordum prædictum incipit ‘Johannes attachiatus fuit ad respondendum, &c.,’ ubi deberet esse ‘Johannes summonitus fuit ad respondendum, &c.,’ est erratum, &c.” (2) “Continetur etiam in eodem recordo quod postquam partes prædictæ placitassent ad patriam quod prædicti Justiciarii cepe-



## No. 22.

A.D. 1341. defeated, or otherwise inconvenience would ensue; for if the execution awarded on the *Scire facias* were affirmed as good, and he could now be answered as to this suit, you would reverse that which you yourselves have previously by judgment affirmed.—*Thorpe*. It will not be so in this case; for we have assigned the same thing for error in the *Scire facias* as that which we now assign, that is to say, in the process and the first judgment.—*Pole*. As to your statement that the record purports that the party was attached, the Court can not understand but that he was first summoned; but because he came by the attachment, that was then the form of enrolment. And as to the judgment that he should be distrained to acquit when there was no judgment on the acquittal of services preceding it, these words show forth the effect of the judgment; and, moreover, that execution on the acknowledgment of the ancestor is warranted by Statute [Westm. 2, c. 9.], and judgments in that form were made of

“runt inde inquisitionem patrie  
“inter easdem partes super placito  
“quod placitaverunt, et non est  
“compertum in eisdem recorde et  
“processu quod partes prædictas  
“tunc comparuerunt, et sic per  
“idem recordum probatur quod  
“prædicta inquisitio inter easdem  
“partes capta fuit in absentia par-  
“tium prædictarum, et sic in hoc  
“erratum est omnino, &c.” (3)  
“In hoc quod præfati Justiciarii  
“præceperunt Vicecomiti Buking-  
“hamie quod distringeret præ-  
“dictum Johannem ad acquietan-  
“dum prædictum Abbatem de  
“prædicta bolla mellis versus  
“dominum Regem, &c., ubi in eis-  
“dem recorde et processu non  
“continetur aliquod iudicium inde

“redditum fuisse, erratum est  
“omnino.” The Abbot’s joinder  
in Error was :—(1) “In hoc non  
“est erratum quia dicit quod cum  
“pars defendens venit in Curia  
“Regis per attachiamentum, &c.,  
“ad respondendum alicui de quali-  
“cumque placito, magis proprie  
“inrandum est in recorde quod  
“pars defendens attachiatus est  
“quam inrandi summonitus est,  
“licet breve inde originale incipi-  
“atur per ‘Summonees, &c.,’ et  
“maxime in brevi de Medio in quo  
“ordinatur processus per Statutum  
“per attachiamentum, &c., ubi  
“pars defendens non est summon-  
“itus, &c. . . .” (2) “In  
“hoc non est erratum quia dicit  
“quod ex quo jurata inde inter

## No. 22.

inconvenient ensuereit; qar si lexecucion agarde en le *Scire facias* afferme pur bon, et il purra ore estre respondu a ceste suyte, vous reverseres la chose qe vous mesmes devant par agard avez afferme.—*Thorpe*. Il ne serra pas issi en ceo cas; qar nous avoms assigne mesme la chose pur erreur en le *Scire facias* qe nous assignoms ore, saver, en le proces et le primer jugement.—*Pole*. A ceo qe vous dites qe le record voet qe la partie fust attache, Court ne poet entendre mes qil [fust] primes somons; mes pur ceo qil vient par lattachement, ceo fust adonques forme denrollement. El quant al jugement qil fust destreint dacquiter qil navoit pas jugement sur acquittance devant, celes paroles purportent leffect du jugement; et auxi cel execucion sur la conisance dauncestre est garranti par statut, et ceux agards furent ancienement faites et pur-

" partes prædictas extitit capta, et  
 " in recordo non reperitur quod  
 " jurata illa non considerata fuit  
 " capi versus prædictum Johannem  
 " per ejus defaultam, nec quod non  
 " secta intratur versus tunc Ab-  
 " batem, per idem recordum satis  
 " aperte probatur præsentiam par-  
 " tium prædictarum fuisse tempore  
 " captionis inquisitionis prædictæ.  
 " . . . " (3) "In hoc non  
 " est erratum, quia dicit quod in  
 " Statuto Westmonasterii secundo  
 " continetur quod cum aliquis  
 " cognoverit in Curia de recordo  
 " quod aliquem acquietare debeat,  
 " &c., judicium inde non fiet per  
 " verba expressa, ut in casu quo  
 " acquietantia disrationatur versus  
 " aliquem per misam partium vel  
 " alio modo, et cum hoc dicit quod  
 " cum per aliquod recordum liquet  
 " quod pars querens recuperet dam-  
 " na sua versus partem ream, et illa  
 " pars rea sit in misericordia, &c.,

" et quod distringatur ad acquie-  
 " tandum, &c., in effectu legis, &c.,  
 " judicium illud est super princi-  
 " pale, et sic præfati Justiciarii in  
 " hoc quod præceperunt Vicecomiti  
 " quod distringeret prædictum Jo-  
 " hannem ad acquietandum, &c.,  
 " licet judicium inde in eodem  
 " recordo per expressa verba non  
 " specificatur, videlicet quod præ-  
 " dictus Johannes acquietaret præ-  
 " dictum Abbatem, &c., ex quo  
 " idem Johannes in eodem recordo  
 " cognovit quod ipsum Abbatem  
 " acquietare deberet, non errave-  
 " runt . . . " And the Ab-  
 " bot prays affirmance of the origi-  
 " nal judgment in Mesne. The  
 " judgment is affirmed, and it is re-  
 " cited that other records had been  
 " examined to show the practice.  
 " The affirmance in the K. B. of the  
 " C. P. judgment on the *Scire facias*  
 " is also mentioned.

## No. 23.

A.D. 1341. old time, and carry with them the same force as do judgments given by express words on the acquittal. And as to the third point, the record purports that the defendant was there when the inquest passed, and thereby it can not be understood but that the plaintiff was there, although no mention be made of his coming; and also in many a case of enrolment no mention is made of the appearance of the parties in continuance of process.—BASSET. We see that this judgment carries with it the effect of a formal judgment, and also it was given by men more learned than we are; and also we have seen many old records, in similar cases, of judgments given by like words; therefore we affirm that judgment wholly; and do you, Abbot, sue execution.—See the first plea.

Note of  
suit made  
touching  
land amor-  
tised with-  
out licence.

(23.) A writ issued out of the Chancery to the Escheator to enquire whether the Abbot of Fécamp purchased certain lands in mortmain, &c., and, if he did, to seize them. By virtue of this suit, on the inquest of office which passed, the lands were seized into the King's hand; and thereupon the Abbot made his suggestion that the lands were amortised to his church of old time, and that the person from whom it was found that he purchased held of him in villenage; and upon this he had a writ to the Justices in the King's Bench *quod vocatis partibus*, &c.—Thereupon *Thorpe* came, and the Abbot being solemnly called did not come, and *Thorpe* prayed, for the King, that the Abbot might never be answered as to that suit; and he prayed further that the Abbot might be charged with the issues for all the mesne time and before the lands were seized into the King's hands, and he prayed a *Fieri facias*.—*Gayneford*. That can not be; for there is no judgment or matter of record binding between

## No. 23.

portent mesme la force qe font les jugements faites A.D. 1341. par expresse parole sur lacquittance. Et al terce point, le record voet qe le defendant y fust quant lenquest passa, ou ceo ne poet estre entendu mes qe le pleintif y fust, tout ne soit pas mencion fait de sa venue; et auxi en moult de cas denrollement homme ne fait pas mencion daparaunce de parties en continuance de proces.—BASS. Nous veoms qe ceo jugement purport leffect dun jugement fourmel, et auxint fust rendu par pluis sages qe nous ne sumes; et auxi avoms vewes moult des aunciens recordes en tiel cas qe furent renduz par autiels paroles; par quei nous affermoms cel jugement en tout; et vous, Abbe, suez execucion. *Vide primum placitum.*

(23.) <sup>1</sup> § Bref issit hors de la Chauncellerie al Es- Not<sup>a</sup>, de chetour denquere si Labbe de Feskamp purchase cer- suyt fait teins terres en mort mayn, &c., et, si sic, de les seisir. de terre Par quele suyte, sur lenquest qe passa doffice, les terres amortie furent seisis en la mayn le Roi; et sur ceo Labbe fist sans li- sa suggestioun qe lez tenementz furent amortis a sa cence. eglise dantiquite, et qe<sup>2</sup> celui de qi fust trove qil purchacea tient de lui en vilenage; et sur ceo avoit bref as Justices en Bank le Roi *quod vocatis partibus*, &c.; ou *Thorpe* vient, et Labbe solempnement demande ne vient pas, et pria pur le Roi qe Labbe mes a cele suyt ne fust respondu; et outre pria qe Labbe fust charge des issues de tout le mene temps et devant qil furent et seisi en la mayn le Roi, et pria *Fieri facias*.—Gayn. Ceo ne poet estre; qar il ny ad pas jugement ne chose

<sup>1</sup> From T. alone.<sup>2</sup> T. de.

## No. 24.

A.D. 1341. parties, but only an inquest of office.—*Thorpe*. The office is served, and the King has right to have the issues, and can not come to them by any other way. —*Gaynesford*. The King in this case shall not have any profit or issues before his entry, for the special law only gives the entry.—*Scot*. Where the King ought to have the year and waste, and did not have it, and twenty years be since past, he shall have the issues for all the time since; but I think that it will be well to sue a garnishment against the Abbot in respect of this.

Error assigned on a writ of Mesne.

(24.) § Error was assigned in that the Justices accepted for a title to acquittal of services that the defendant and his ancestors had acquitted the tenant and his ancestors and those whose estate he had, when the title was not alleged to be continued in the blood. Another error was that it was found by inquest that whereas neither the tenant nor any of his ancestors were acquitted, and so the reverse of his title was shown, yet they founded their judgment on the acquittal. The third error was that they received a verdict to the effect that the ancestors of the tenant brought a writ of Mesne, &c., and died pending the plea, which matter does not fall within the cognisance of jurors, and that they took as the ground of their judgment.—*Pole*. As to the first error, the title was sufficient; besides, it was accepted as sufficient, for on that a traverse was taken. As to the second error, the issue of the tenant was sufficiently found when the title in right was found by inquest; for it was found that the defendant's ancestors had always acquitted those whose estate the tenant had. As to the third error, that was not taken as the ground of judgment, but the title which was found for the plaintiff was so taken; and this suit of Error is

## No. 24.

de record qe lie entre parties, mes enquest soulement A.D. 1341. doffice.—*Thorpe*. L'office ad servy, et le Roi ad resoun daver les issues, et par autre voie ne poet avenir.—*Gayn*. Le Roi navera en ceo cas nul profist ne issues avant son entre, qar la ley especial ne doune forsque lentre.—*Scor*. La ou le Roi deit aver an et wast, sil nel avoit pas, et xx. aunz soient passes puis, il avera les issues de tout temps puis; mes jeo quide qil serra bien de suyr garnisement vers Labbe en ceo dreit.

(24.)<sup>1</sup> § Erreur fust assigne de ceo qe Justices ac- Erreur assigne en bref de Man.  
 ceptèrent pur title dacquittance qe le defendant<sup>2</sup> et ses  
 auncestres avoint acquite le tenant et ses auncestres  
 et ses qi estat il avoit, ou le title ne fust pas allege  
 estre continue en le sank. Autre erreur de ceo qe  
 trove fust par enquest qe la ou le tenant ne nul de  
 ses auncestres furent acquites, issi le revers de son  
 title trove, uncore il lia jugement en lacquittance. Le  
 terce erreur de ceo qil resceutrent verdit come les  
 auncestres le tenant porterent bref de mene, &c., et  
 moryrent en pledant, quele chose ne chiet en lour  
 conisance, et ceo pristrent pur cause de jugement.—  
*Pole*. Quant al primer erreur, le title fust sufficeant;  
 ovesqe ceo, il fust accepte pur sufficeant, qar sur  
 ceo travers fust pris. Quant al autre erreur, la mise  
 le tenant fust assetz trove quant le title en dreit fust  
 trove par enquest; qar trove fust qe les auncestres  
 le defendant de tout temps acquiterent ses qi estat  
 le tenant avoit. Quant a terce erreur, ceo ne fust  
 pris pur cause de jugement, mes le title qe fust trove  
 pur le plaintif; et ceste suyte derroure nest fait mes pur

<sup>1</sup> From T. alone, as far as the point at which the larger type

ends. See Y. B., Easter, 14 E. 3, No. 53.

<sup>2</sup> T. demandant.

## No. 24.

A.D. 1341. only made to delay execution ; and therefore we pray that the judgment be affirmed, and we pray execution.—BAUKWELL. We hold the judgment to be good, and therefore we affirm it. *Pole*.—We pray execution for the damages.—BAUKWELL. You have in the record that he had heretofore an *Elegit* for his damages.—SCOT. We did not find the writ of execution returned ; and the party alleges that you sued a *Supersedeas* ; wherefore let him have execution now.—And he had an *Elegit*.

Mesne.

§ The record of a writ of Mesne was caused to come into the King's Bench, in which record the plaintiff made title in that the defendant and his ancestors had always acquitted the plaintiff and his ancestors and the tertenants, whereas the defendant said that he and his ancestors had not acquitted as above ; ready, &c. ; and the other side said the contrary. It was found by verdict that the plaintiff's grandfather was enfeoffed by one Agnes, and that the defendant and his ancestors had always theretofore acquitted Agnes and her ancestors up to the time of the feoffment, after which time they had not acquitted, &c., and therefore the grandfather brought a writ of Mesne, and died pending the plea, and the father also. It was adjudged that the plaintiff should recover acquittal of services.—It was said that the Justices erred, inasmuch as it was found that the plaintiff and his ancestors were not acquitted, which was the reverse of the plaintiff's title, and they gave judgment for the plaintiff, and therein erred.—Further, inasmuch as they accepted that for title, whereas the prescription was alleged in a stranger and not in the plaintiff's blood throughout, they erred.—Further, inasmuch as they took by verdict matter of record, which does not lie within the cognisance of the jurors, and gave judgment before they were apprised whether there was such a record, they erred.—To this it was said, as to the first point, that when the prescription was found up to the time at which the defendant's ancestors ceased to perform the acquittal, of their own wrong, their wrong at so late a time does not defeat the title to the acquittal.—And, as to the point that the title was not sufficient, that does not lie in the defendant's mouth, because he accepted it as good inas-

## No. 24.

delaier lexecucion ; et pur ceo nous prioms qil soit A.D. 1341. afferme, et prioms execucion.—BAUK. Nous tenoms le jugement bon, par quei nous laffermoms.—*Pole.* Nous prioms execucion de damages.—BAUK. Vous avez en le record qil avoit autrefoitz *Elegit* pur ses damages.—SCOT. Nous trovames pas<sup>1</sup> le bref en lexecucion retourne ; et la partie allege qe vous suystes *Supersedeas* ; par quei eit execucion ore.—*Et habuit Elegit.*

§ Le<sup>1</sup> record dun bref de Meen fut fait venir en Bank le Meen. Roy, en quel record le pleintif fit title qe le defendant et [Fitz. ces auncestres avoient aquite le pleyntif et soun auncestre et Judgment, les terres tenante tot temps, ou la defendant dit qil et ses 122.] auncestres navoient pas aquite *ut supra* ; prest, &c. ; et *alii e contra*. Trove fuit par verdit qe le aiel le pleyntif fut fesse par un Agnes, et qe le defendant et ces auncestres avoient tot temps davant acquite Agnes et ses auncestres al feffement, pus quel temps il navoit pas aquite, &c., par quei laiel porta bref de Meen, et morust en pledant, et le pere auxi. Agarde fuit qil recovereit acquitance.—Fuit dit qe errerent, en tant come trove fuit qe le pleintif et ses auncestres ne furent pas acquite, qe fuit la reverse de title le pleintif, et ils donerent jugement pur le pleintif, et en tant ils errerent.—Estre ceo, en tant come ils acceperent ceo pur title, ou la prescripcion fuit lie en estrange persone, et ne mye en la saunk le<sup>2</sup> pleyntif continuellement, ils errerent.—Estre ceo, en tant come ils pristrent chose de record par verdit, qe ne chiet pas en leur conisaunce, et rendrent jugement avant qils furent apris sil y avoit tiel record, ils errerent.—A ceo, quant al primer poynt, quant trove fuit la prescripcion<sup>3</sup> tant qe al temps qe les auncestres<sup>4</sup> defendant de leur tort cesserent del aquitance, leur tourt de si tardif ne defait mye la title del aquitance.—Et, quant a ceo qe title ne fut pas sufficeant, ceo ne gist pas en sa bouche, qar il accepta bien en tant com il

<sup>1</sup> T., par.

<sup>2</sup> This report of the case is from L. alone.

<sup>3</sup> L., et le.

<sup>4</sup> L., primer scrip coin.

<sup>5</sup> L., launcestres.



## No. 25.

A.D. 1341. much as he traversed the title when he pleaded in law.—  
And as to the records, they were not the cause of the judgment.

Suit by  
petition in  
respect  
of land  
seized into  
the King's  
hand by  
reason of  
the repeal  
of the  
exile of  
H. le  
Despenser  
being re-  
versed.

(25.) § Hugh le Despenser was exiled in the time of the father of the present King, and afterwards that exile was repealed, and he was restored to the law, and he purchased lands and rendered them by fine to one Adam, to hold to Adam and his heirs, which Adam continued his estate, &c. And now in the time of the present King that repeal of the exile of Hugh was reversed in Parliament, and after the death of Hugh it was adjudged that the first exile should stand in force, and that his lands and tenements, &c., should be seized; and by force of that judgment the lands which A. purchased were seized into the King's hand, wherefore A. sued to the King to remove his hand. And this matter was sent into the King's Bench, and there it was rehearsed as above.—SCOT. The repeal of Hugh's exile is reversed by judgment of Parliament, so that by law Hugh is to be considered as having been during the whole time after the first exile out of the law, and consequently all the lands which he had are forfeited, in whose hands soever they may be; and if the judgment be not good, this must be redressed in another way.—*Redenesse*. Sir, he was within the law when we purchased from him, and his exile was at that time repealed, and during the whole of his life the repeal of his exile stood in force, and during the whole of the time of the King the father, &c., in whose time we purchased; wherefore it seems that we ought not to be ousted by any judgment which was given after his death. And suppose that one who has committed felony, and been outlawed, and afterwards restored to the peace by the King's charter, purchase and aliene, even if the King will repeal his charter, still the purchase will

## No. 25.

traversa le tittle la ou il pleda en ley.—Et, quant as recordes, A.D. 1341. ceux ne furent pas cause de jugement, &c.

(25.)<sup>1</sup> § Hugh le Despenser en temps le pere le Roi qor est fust exule, et puis cele exile fust repele et il restitut a la ley, et il purchacea terres et rendist par fyne a un Adam, a lui et ses heirs, le quel continua son estat, &c. Et ore en temps le Roi qor est cel repel dexile de Hugh fust defait en Parlement, et apres la mort Hugh agarde qe le primer exil esterreit en sa force, et qe ses terres et tenementz, &c., fuissent seisis; par force de quel agard les terres qe A. purchacea furent seisis en la mayne le Roi, par quei il suyst au Roi douter la mayne. Et ceo fust mande en Bank le Roi, et illoeques reherce *ut supra*.—Scor. Le repel del exile Hugh est defait par jugement de Parlement, issi qe par ley il est a juger come de tout temps puis le primer exil hors de la ley, et *per consequens* touz les terres qil avoit forfeites, en qi mayns qil soient; et si le jugement ne soit bon, ceo covient donques estre redresse par autre voie.—*Reden.* Sire, il fust a la ley quant nous purchaceaoms de lui, et son exil adonques repele, et toute sa vie le repele de son exil estuit en sa force, et tout le temps le Roi le pere en qi temps nous purchaceaoms; par quei il semble qe par nul jugement qe se fist apres sa mort nous ne devons estre ouste. Et jeo pose qe homme qad fait felonie soit utlage, et puis restitut par chartre le Roi a la pees, purchace et aliene, mesqe le Roi voille repeller sa chartre, uncore

Suyt par  
petition  
de terre  
seisi en  
meyn le  
Roy par  
le repel  
del exil H.  
le Despen-  
ser defait,  
&c.  
[Fits.  
Petition,  
2.]

<sup>1</sup> From T. alone, until otherwise stated.

## No. 25.

A.D. 1341. not be escheated; nor in this case.—SCOT. In Eyre it has been seen that a felon has been attainted on a presentment after his death; and when judgment is reversed, it is as though the judgment had never been.

**Petition.**     § John de Mulesgrove sued by Petition to the King, showing how he had purchased of Hugh le Despenser the manor of T., during the time when Hugh was in the peace and in fealty to King Edward, father of the present King, [and remained seised] until he was ousted by command of the present King. This Petition was sent into Chancery; a writ issued to enquire as to the truth. It was found that the said Hugh, after the exile which was pronounced against him had been repealed, purchased, and enfeoffed this John de Mulesgrove.—The whole matter was sent into the King's Bench.—John prayed restitution.—*Thorpe*. This repeal of the exile was repealed by Statute in the time of the present King, and the exile previously effected was affirmed, and so at any time after the exile Hugh is adjudged a felon; wherefore, &c.—*Blairk*. When the exile was repealed in Parliament then Hugh stood as any man within the common law; then he purchased, and enfeoffed us, and by that feoffment rightful title accrued to us, and at that time King Edward, the father of the present King, had no right of action in respect of this land, and therefore no right could descend from King Edward, the father, to the present King, to claim these tenements, &c.—SCOT. If the outlawry of any one be reversed, and he purchase thereafter and aliene, and afterwards the reversal be revoked, and the outlawry affirmed, the feoffee shall lose absolutely, and yet he had a title at one time.

## No. 25.

le purchace ne serra pas eschete; *neque hic*.—SCOT. A.D. 1341.  
 En Eire homme ad vew qe felon ad este atteint  
 apres sa mort par presentement; et quant jugement  
 est reverse, il est auxi come unqes jugement nust esta.<sup>1</sup>

§ Johan<sup>2</sup> de Mulesgrove suyt par petition al Roy, *Petition.*  
 moustrant com il oust purchace de Hugh le Despenser<sup>3</sup>  
 le manere de T., tant com celuy estoit alla pees et a  
 la fye le Roy E. pere, tantqe par comaundement le  
 Roy qore est il fuit ouste. Cel petition maunde en  
 Chancellerie; issit bref denquere la verite. Trove fut  
 qe le dit Hugh, apres ceo qe lexil qe fuit pronuncie  
 en luy fust repelle, il purchacea, et enfeffa cesti J.—  
 Tot fuit maunde en Baunk le Roy.—Il pria restitution.  
 —*Thorpe*. Cel repelle del exil par statut en temps  
 le Roy qore est fuit repelle, et lexil devant fait fuit  
 afferme, issint a chescun temps pus lexil Hugh ajugge  
 pur feloun; par quei, &c.—*Blaik*. Quant lexil fuit  
 repelle en Parlement donqes fuit il homme a la comune  
 ley; donqes il purchacea, et nous enfeffa, par quel  
 feffement droytur el tite nous fuit acru, a quel temps  
 le Roy E. pere avoit nul accion a cest terre, par quei  
 del Roy E. pere ne purra nul droit descendre al Roy  
 qore est, de clamer ceux tenementz, &c.—SCOT. Si un  
 utlagerie soit reverse dune homme, il purchace apres  
 et aliene, et pus le reversaille est repelle, et le utlagerie  
 aferme, le feffe perdra outre,<sup>4</sup> et si avoit il tite a un  
 temps, &c.

<sup>1</sup> T., nest ouste, instead of nust  
 este.

<sup>2</sup> This report of the case is from  
 L. alone.

<sup>3</sup> L., de Lespenser, instead of le  
 Despenser.

<sup>4</sup> L., autre.

## Nos. 26, 27.

A.D. 1341.  
Note well  
concerning  
an Assise  
of Novel  
Disseisin.

(26.) § Note that, in the Bench, in the case of an Assise of Novel Disseisin of rent, the tenant appeared by bailiff; wherefore the Court questioned the plaintiff as to what kind of rent it was, and he said it was rent service.—*Pole*. State the cause of the disseisin.—*Blaik*. When we shall come to the taking of the assise then he will state it, and previously he will not.

Attaint.  
Note con-  
cerning a  
day given.

(27.) § An Attaint was sued in the King's Bench, in Trinity term in the 14th year, and on the fourth day of the Quinzaine the plaintiff appeared, and took a day over to fifteen days from the day of the Holy Trinity; and afterwards it was continued until now by days from term to term, as if the first adjournment had [not] been good. And now *Thorpe* alleged discontinuance, because the first adjournment was from the Quinzaine of Trinity to the Quinzaine of Trinity, which can only be the same Quinzaine, and so no day was given, or, if there was, it might have been ten years afterwards, which can not be a continuance.—*Scot*. When the adjournment was made, the fourth day of the Quinzaine, until the Quinzaine of Trinity, that must be to the Quinzaine then next ensuing; and although this was a longer adjournment than is common, this is only a delay to the plaintiff, to which he assented, so that this is not a discontinuance, as some people think, and the continuance afterwards made between the two days we hold as nothing; and that case has been often seen, and the process has been held good: wherefore it seems to us that it is a sufficient continuance.—Afterwards *Nisi prius* was awarded.

Attaint.

§ In Attaint the parties had a day in the King's Bench on the Octaves of Trinity of last year, and it was entered that a day was given to the Octaves of Trinity, and exception was taken to the length of the adjournment. And there were two writs in the mean time to distrain the twenty-four.—Nevertheless the process was adjudged good.

## Nos. 26, 27.

(26.) § *Nota* qen Bank en cas dassise [de] Novele A.D. 1341.  
 Disseisine de rente, le tenant fust par baillif; par quei Nota bene  
de assisa  
Novm  
Disseisina.  
 Court apose le pleintif de quele rente, qe dit de rente  
 service.—*Pole*. Ditez la cause de disseisine.—*Blayk*.  
 Quant nous vendroms a la prise de lassise donques il  
 dirra, et devant nient.

(27.)<sup>1</sup> § Atteynt fust suy en Bank le Roi, *anno xiiii.*<sup>o</sup> Atteynt.  
Nota de  
jour done.  
[15 Li.  
Ass., 6.]  
*termino Trinitatis*, et le iiij. jour de la xv. le pleintif  
 aparust, prist jour outre a *die Sancte Trinitatis*  
*in xv. dies*; et puis fust continue tanqore par jours  
 du terme en terme, auxi com le primer ajournement  
 ust este bon. Et ore *Thorpe* alega discontinuance, qar  
 le primer ajournement fust de la xv. de la Trinite  
 tanqe la xv. de la Trinite, qe ne poet est forsqe mesme  
 la xv., et issi nul jour done, et si autrement, donques  
 fust ceo par cas x. aunz a venir, qe ne poet estre  
 continuance.—*Scot*. Quant lajournement fust fait,  
 le iiij. jour de la xv., tanqe la xv. de la Trinite, ceo  
 covient estre a la xv. donques proscheine ensuant; et  
 coment qe ceo fust pluis longe jour qe comune jour,  
 ceo nest forsqe delaye du pleintif, a quel il sassentist,  
 issi qe ceo nest pas discontinuance, a ceo qe ascuns  
 gentz quident, et la continuance fait puis entre les  
 ij. jours tenoms pur nul; et cel cas ad este sovent  
 vew, et le proces agarde bon; par quei il nous semble  
 qe ceste continuance assetz.—Puis *Nisi prius* fust  
 agarde.

§ En<sup>2</sup> attante les partiez avoient jour en Baunk [le Roi] as Atteynt.  
 Utaves de la Trinite aultan, et fuit entre qe jour fuit done  
 tanqe as Utaves de la Trinite, et fuit chalange pur longe jour.  
 Et deux brefs furent en meen temps a destreindre xiiij.—*Tamen*  
 le proces fuit agarde bon, &c.

<sup>1</sup> From T. alone, as far as the point at which the larger type ends.

<sup>2</sup> This report of the case is from L. alone.

## No. 28.

A.D. 1341.

*Scire  
facias.*

(28.) § Note that a *Scire facias* was sued in the King's Bench on the tenor of a fine which came out of the Treasury; and the fine was levied of a manor of which two parts were rendered to A., and the reversion of the third part was granted by the same fine after the death of a woman tenant in dower; and the fact was that a writ was sent to the Treasurer and Chamberlains [of the Exchequer] to send the tenor of the fine of two parts of the manor, &c.; and by force of the writ they sent the tenor of the whole of the fine, as well of the third part as of the two parts; and this was sent by *Mittimus* out of the Chancery into the King's Bench; and the demandant now sued to have execution of the entire manor; and it was alleged that, as to the third part, the fine had come without warrant.—BAUKWELL. We have no regard to its coming into the Chancery without warrant, for you ought not to have oyer of that writ, nor would it be necessary for it to be sent here, but the *Mittimus* gives us warrant. Besides, when he first sued as to the two parts, the woman who held in dower was alive, and now she is dead, and the King on that account has directed us to proceed as well in respect of the third part as in respect of the residue; wherefore answer.—*Pole* alleged at first special nontenure; and because the Court put him to answer as to the residue, he took upon himself the tenancy of the entirety, and said that the tenements were in another vill.—BAUKWELL. Answer as to the tenements comprised in the fine.—*Pole*. As to two parts, he who rendered had nothing, but one W., whose estate we have, was seised; ready, &c.; judgment, &c. And as to the third part, he who granted had nothing in the reversion, but the woman who was tenant in dower held in our right; ready, &c.—And the other side said the contrary.

## No. 28.

(28.)<sup>1</sup> *Nota* qe *Scire facias* fust suy en Bank le Roi A.D. 1341.  
hors del tenour dun fyne qe vient hors de la Tresorie, Scire  
facias.  
qe se leva dun manoir dont les ij. parties furent  
renduz a A., et la reversion de la terce partie fust  
grante par mesme la fyne apres le decees une femme  
tenante en dowere; issi qe bref fust mande a Tresorer  
et Chamberleyns de mandre le tenour de la fyne de  
ij. parties del manoir, &c.; et par la force del bref  
il manderent le tenour de tout la fyne, si bien de  
la terce partie come de les ij. parties; et hors de  
Chauncellerie ceo fust mande par *Mittimus* el Bank  
le Roi; et le demandant ore suyst daver execucion del  
manoir entier; et fust allege coment, en droit de la  
terce partie, la fyne est venu saunz garrant.—*BAUK.*  
Nous navoms regard a ceo qil vient en Chauncellerie  
sanz garrant, qar de cel bref vous ne duissiez pas aver  
oy, ne il bosoignereit qil fust mande cy, mes le *Mittimus*  
nous doune garrant. Ovesqe ceo, quant il suyst primes  
en droit de les ij. parties, la femme qe tient en dowere  
fust en vie, et ore ele est mort, et le Roi pur ceo nous  
ad mande qe nous aloms avant si bien de la terce partie  
come del remenant; par quei responez.—*Pole* alegea  
nountenne especial primes; et pur ceo qe COURT lui  
myst de respondre del remenant, il prist tenance del  
entier, et dit qe les tenementz furent en autre ville.—  
*BAUK.* Respondez a les tenementz compris deinz la fyne.  
—*Pole.* Quant a ij. parties, celui qe rendist navoit  
rien, einz un W., qi estat nous avoms, fut seisi; prest,  
&c.; jugement, &c. Et quant a la terce partie, celui  
qe graunta navoit rien en la reversion, einz la femme  
tenante en dower tient en nostre droit; prest, &c.—*Et*  
*alii e contra.*

<sup>1</sup> From T. alone.



## No. 29.

A.D. 1341.

*Scire  
facias.*

(29.) § *Scire facias* was sued, in the King's Bench, on a judgment against several persons. Some of them showed that they were in possession of the land, whereof execution was demanded, by descent, and they prayed their age; and the others showed that they were parceners, and that partition was made, and they prayed aid of those who were under age, and prayed further that the parol might demur.—*Redenesse*. You see clearly that this suit is for that which has been recovered and adjudged, and by the Statute<sup>1</sup> delays are taken away, and he answers nothing; judgment, and we pray execution.—*Thorpe*. Those who are under age can not by law acknowledge the descent of that which has descended to them, nor shall they be put to plead; and if they were of full age, they would have, perhaps, a release or other matter to plead, &c.—*BAUKWELL*. What would descend to them, when it was lost to the ancestor by judgment?—*Thorpe*. In a *Scire facias* on a fine where land is rendered, if execution be sued against the infant heir, when his ancestor who rendered continued [seised] all his life, he shall have his age; for if the ancestor had only a fee tail, his issue would disturb the execution.—*BAUKWELL*. He would hardly have his age in that case, in a *Scire facias*, &c.—*Thorpe*. In a *Scire facias* on a recognisance sued against the heir, *SCROPE* adjudged that he should have his age.—*BAUKWELL*. And that was strange, for the heir is not charged as heir but as tenant.—*Thorpe*. We claim by way of reversion from an ancestor other than the ancestor who lost, and therefore we are in a better case.—*BAUKWELL*. Say whether you will have aid or not, for, as to your age, it does not make the parol demur.—*Thorpe*. He does not deny that we hold in

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<sup>1</sup> 13 Ed. I. (Westm. 2.), c. 45.

## No. 29.

(29.)<sup>1</sup> § *Scire facias* fust suys hors dun jugement A.D. 1341.  
 vers plusours en Bank le Roi, dont les uns moustrerent <sup>Scire</sup>  
 qil furent einz la terre, dount execucion est demande, <sup>facias.</sup>  
 par descende, et prièrent leur age; et les autres mous- <sup>[Fitz.</sup>  
 trerent queles sont parceners, et purpartie fait, prièrent <sup>Age, 95.]</sup>  
 eide de cetes deinz age, et outre qe la parole demorast.  
 — *Reden.* Vous veez bien qe ceste suyte est de  
 chose recoveri et ajuqe, et par lestatut delays sont  
 oustes, et il respond rien; jugement, et prioms execu-  
 cion.—*Thorpe.* Ses qe sont deinz age de chose qest  
 descendu par ley ne poe[n]t conustre leur descent, ne  
 serront mys de pledre; et sil fuissent de pleine age, il  
 ount, par cas, relees ou autre chose a dire, &c.—*BAUK.*  
 Quele chose descendra a eux, quant il fust perdu en  
 launcestre par le jugement?—*Thorpe.* En *Scire facias*  
 hors dune fyne ou terre est rendu, si execucion soit  
 suy vers leur deinz age, ou son auncestre qe rendist  
 continua toute sa vie, il avera son age; qar, sil navoit  
 qe fee taille, son issu destourbereit execucion.—*BAUK.*  
 A peyn sil averoit son age la, en un *Scire facias*, &c.  
 —*Thorpe.* En un *Scire facias* hors de reconisance  
 suy vers leur, *SCROPE* agarda qil ust son age.—*BAUK.*  
 Et ceo fust merveille, qar leur nest pas charge come  
 heir mes come tenant.—*Thorpe.* Nous clamoms par  
 voie de reversion dautre auncestre qe de celui qe  
 perdist, par quei nous sumes en meillour cas.—*BAUK.*  
 Parlez si vous averez eide ou noun, qar, quant a  
 vostre age, il fait pas a demorer.—*Thorpe.* Il ne dedit

<sup>1</sup> From T. alone. There is a short abridgment in L., but the text of it appears to be corrupt.

## No. 29.

A.D. 1341. parcenary ; judgment.—BAUKWELL. We wish to consider that point ; and a tenant for life or by the curtesy of England would have aid.—And then *Thorpe* went back to praying his age, and said that although judgment was given against his ancestor, execution not being had, the ancestor died seised in his demesne as of fee, and that it was right that the heir should, in the *Scire facias*, which is in lieu of an original, have his age.—SCOT. How shall you have your age, when your ancestor lost the right and you the descent ? For suppose that he who recovered had ousted you, and you had brought the assise by averment of the continuance in your ancestor, do you think you would have an assise because execution was not had during the life of your ancestor ? No, you would not have it ; why, then, should you have your age when you are warned in a *Scire facias* when his entry is maintainable ? Besides, he says that he heretofore sued against you yourself by a *Scire facias* and by way of Error, when the judgment was partly reversed and partly affirmed, whereof he prays execution ; and then, when it was affirmed, he could immediately have had execution ; why, then, not now ? —*Thorpe*. *Vigilantibus et non dormientibus, &c.* ; why did he not pray it then ? And we are in a more favourable case, inasmuch as we claim and have the reversion by an ancestor other than the ancestor who was party.—*Blak*. If judgment be given against a tenant for term of life, and be not executed during his life, if the reversioner enter and he be warned, he shall not disturb the execution ; even though the demandant had not right the judgment shall be executed, and the reversioner shall be put to his action of a higher nature, if he has any right ; so here.—*Thorpe*. At our full age we will show a release, and by law we ought not yet to acknowledge.—BAUKWELL. An in-

## No. 29.

pas qe nous tenoms en parcenerie; jugement.—BAUK. A.D. 1341.

De ceo voloms aviser; et tenant a terme de vie ou par ley Dengleterre avereit eide.—Et puis *Thorpe* resorti al prier de son age, et dit qe coment qe jugement se taille vers son auncestre, execucion nient fait, il moert seisi en son demene come de fee, il est resoun qe son heir, al *Scire facias*, qest en lieu doriginal, qil eit son age.—SCOTT. Coment averez vostre age, quant vostre auncestre perdist le dreit et vous descendre? Qar jeo pose qe celui qe recovery vous oustast, et vous portastes lassise par averement de la continuance en vostre auncestre, quides vous daver assise pur ceo qe execucion ne fust pas fait en la vie vostre auncestre? Nanil, vous nel averez pas; pur quei, donques, averez vostre age la ou vous estes garny en *Scire facias* quant son entre est meynテナble? Ovesqe ceo, il dit qil suyst vers vous mesmes avant ses houres par *Scire facias* et par voie derroure, ou en partie le jugement fust reverse et en partie afferme, de quei il prie execucion; et adonques, quant il fust afferme, il poait tantost aver ew execucion; pur quei nient ore donques?—*Thorpe. Vigilantibus et non dormientibus, &c.*; par quei nel ust il prie adonques? Et nous sumes en pluis favorable cas, en tant qe nous clamoms et avoms la reversion par autre auncestre qe celui qe fust partie.—*Blayk*. Si jugement se face vers tenant a terme de vie, nient execut en sa vie, si celui entre en qi la reversion est et il soit garni, il destourbera pas execucion; coment qe le demandant navoit pas dreit le jugement serra execut, et il serra mys a saccion de pluis haut, si dreit en ad; auxi icy.—*Thorpe*. A nostre age nous moustroms relees, et par ley ne devons uncore conustre.—BAUK. Enfant re-

## No. 29.

A.D. 1341. fant answers in respect of his purchase, and yet he can not acknowledge.—*Thorpe*. He does not deny the cause of our age-prayer, wherefore we demand judgment.—*Redenesse*. We tell you that when our ancestor brought his writ of Entry, on the disseisin effected on his father, against Florence and her husband, Florence was admitted to defend her right, and she pleaded in bar, as the assignee of W. Brounsmith, the same gift that W. was supposed to have made to her husband and her by the form, &c.; and thereupon she showed a deed, and by the warranty she wished to bar him; then we pleaded that she had nothing of W.'s gift, and that was found by the inquest; and through that same Florence they make themselves heirs to W. Brounsmith, because she was his daughter: judgment whether, contrary to that verdict, which is of record, and to which their ancestor was party, they can say that by reason of the gift, as above, they are in as heirs, when the contrary of the gift is found by the verdict.—*Thorpe*. We are estranged from claiming by Florence, for W. her father survived, so that she never had anything but by purchase in tail, in respect of which estate we can not have an Attaint or reverse the judgment, but we claim the right descended from an earlier ancestor; and although we were heir to her, yet since the judgment was not executed in her lifetime, we should expect to have our age; but now it is more clear.—*Scor*. Did not W. lose the reversion by the judgment given against Florence? For even though he had entered he should not disturb execution.—*Thorpe*. He did not lose the reversion if the judgment was not executed, and if he were in he would plead in his possession several matters why execution should not be had; and that advantage we, who are heirs, shall lose if we have not our age.—*Redenesse*. The suit

## No. 29.

spond de son purchace, et si ne poet il conustre.—A.D. 1341.  
*Thorpe.* Il ne dedit pas la cause de nostre age priere, par quei nous demandoms jugement.—*Reden.* Nous vous dioms qe nostre auncestre, quant il porta son bref dentre sur disseisine fait a son pere vers Florence et son baroun, Florence fust resceu a defendre son droit, et pleda en barre, come assigne W. Brounsmith, par mesme le doun qe W. duist aver fait a son baroun et lui par la forme, &c.; et sur ceo moustra fet, et par la garrantie lui voleit barrer; ou nous pledames qele navoit rien del doun W., et ceo fust trove par enquest; et par mesme celui Florance se font il heirs a W. Brounsmith, pur ceo qele fust sa fille; jugement si, contre ceo verdit de record, a qi lour auncestre fust partie, puissent il dire qe par cause del doun, *ut supra*, qils sont einz come heirs, ou le contrarie del doun est trove par verdit.—*Thorpe.* Nous sumes estrange de clamer par Florence, qar W. son pere survesquist, issi qele navoit unques forsque par purchas en taille, de quel estat nous ne poms aver atteinte ne reverser le jugement, mes clamoms le droit descendu par launcestre paramont; et tout fuissoms heir a lui, quant le jugement ne fust pas execut en sa vie, nous quideroms aver nostre age; mes orest il pluis cler.—*Scot.* Ne perdit pas W. le reversion par le jugement taille vers Florence? Qar mesqil ust entre il destourbereit pas execucion.—*Thorpe.* Il perdit pas le reversion si le jugement nust este execut, et sil fust einz il pledreit en sa possession par quei execucion ne se freit pas par moult de materes; et cel avantage nous, qe sumes heirs, perdroms si nous neioms nostre age.—*Reden.* La suyte fust fait vers eux par

## No. 30.

A.D. 1341. was made against them by way of Error, and as to parcel, in respect of which we were by the first judgment foreclosed of action, the judgment is reversed and we are restored to our action; and as to the residue, whereof we pray execution, the judgment being affirmed, we might immediately have had execution without being delayed by their nonage.—BAUKWELL. You would not have had execution then without garnishment, and if they had been warned they would have had the same answer as they have now.—*Thorpe*. No, certainly, he would not have had execution without garnishment, for his suit by way of Error could not extend to the parcel which he himself recovered.—And afterwards, in Trinity term in the 16th year, they were ousted from their age and also from the aid; and because they did not plead anything else execution was awarded.

Scire facias  
to re-ex-  
tend tenements de-  
livered by  
execution  
on a recog-  
nizance.

(30.) § A man had an *Elegit* by force of an execution, and the recognisor, on whose possession execution was made, said that the extent was assessed too low, and he prayed a re-extent; and thereupon he had a *Scire facias*. The party warned came and said, by *Pole*, that this writ was given by Statute,<sup>1</sup> and must be warranted by a record, and that this writ had issued only on the suggestion of the party, in which case a *Venire facias* should serve and not this; judgment of the writ.—BAUKWELL. This writ takes its source from the record, and you shall have a writ of *Scire facias* against a tenant to hear the errors of a judgment; and in a Detinue of writings, when the defendant says that he received the writing on a condition, &c., and prays that the other may be warned, a *Scire facias* issues; and also in this case.—*Thorpe*. If a man sues execution contrary to his own deed,

<sup>1</sup> 13 Ed. I. (Westm. 2.) c. 45.

## No. 30.

voie derroure, et en dreit de parcelle, dont nous fumes A.D. 1341. par la primer jugement forclos daccion, le jugement est reverse et nous restitut a nostre accion; et del remenant, dont nous prioms execucion, le jugement afferme, nous le poames aver ew tantost sanz estre delaye par lour noun age.—BAUK. Vous neussez pas ew execucion a donques saunz garnisement, et sil ust este garnis ils ussent ew mesme le respouns come ore out.—*Thorpe*. Noun, certes, ele nust pas ew execucion sanz garnisement, qar sa suyte par voie derroure ne se poait estendre a la parcele quele il mesme recoveri.—Et puis *termino Trinitatis anno xvj<sup>o</sup>*, il furent oustes del age et auxi del eide; et pur ceo qil ne disoient autre chose execucion fust arde.

(30.)<sup>1</sup> § Un homme avoit par force dune execucion *Elegit*, et le reconisour, hors de qi possession execucion fust fait, dit qe lextent fust assis trop bas, et pria rextente; et sur ceo avoit *Scire facias*. La partie garni vient et dit, par *Pole*, qe ceo bref est done par statut, et covient estre garranti par record, et cestui bref est issu forsque sur suggestioun de partie, en quel cas *Venire facias* servireit et noun pas cestui; jugement du bref.—BAUK. Cesty bref prent son sours del record, et vous averez bref de *Scire facias* vers un tenant doier les erreurs dun jugement; et en detenue descript, ou le defendant dit qil rescout lescrip sur condicion, &c., et prie qe lautre soit garni, *Scire facias* ist; et auxi en ceo cas.—*Thorpe*. Si homme suyst execucion contre son fet demene, homme arde *Venire*

*Scire facias*  
de rees-  
tendre  
tenements  
liveres par  
execucion  
hors de  
un reconi-  
sance.  
[Fitz.  
Extent, 17;  
*Scire*  
*facias*,  
115.]

<sup>1</sup> From T. alone, as far as the point at which the larger type ends. From the names of the Judges the case appears to have been heard in the Court of King's Bench. A somewhat similar case occurred in the Court of Common

Pleas (*Placita de Banco*, Trin., 15 Ed. III., R<sup>o</sup>. 325), in which, however, the obligee (Isolda, late wife of William Inge) had directed against her a writ of *Venire facias* "ad computandum" with the obligor (Thomas de Rotheryk).



## No. 30.

A.D. 1341. a *Venire facias*, and not a *Scire facias*, is awarded.—

BAUKWELL. That suit, however, is not taken from the record; but in this case it is taken from the record; therefore answer.—And the plaintiff alleged how his lands were extended at too low a rate, and also that livery was made of more than a moiety.—*Thorpe*. Your writ does not purport that you ought to have part back again because more was delivered than ought to have been; and if the fact were so, your writ should make mention of it; wherefore we demand judgment of the writ. For suppose we had levied the whole, by reason whereof you brought a *Scire facias* against us to account, the writ should make mention [that we ought to show cause] why you ought not to have back your land; so likewise here.—BAUKWELL. His object is now by his suit to defeat the first extent, and to have a new extent as if nothing had been done, and then there will be delivered to you that which you ought reasonably to have and nothing more.—*Pole*. We are seised, and therefore livery can not be made to us; but he supposes by his plaint that he ought to have back part of what we have, and the writ whereby he causes us to be warned, &c., is not to that effect.—BAUKWELL. He does you a courtesy in warning you, for by law he would have a re-extent without any garnishment, and an issue can not be taken between you as to whether the extent be well made or not.—*Pole*. If more were delivered to us than ought to have been, he could have an assise for the surplus.—*Thorpe*. Never; when a Sheriff, by warrant and by colour, delivers land, although he deliver more than he ought, it shall not be recovered by assise.—BAUKWELL. If a writ issue to the Sheriff to deliver seisin of twenty [acres], and he deliver thirty, will not he who is ousted have an assise for the ten?—*Thorpe*. Certainly not; for by his demand

## No. 30.

*facias*, et noun pas *Scire facias*.—BAUK. Auxi nest A.D. 1841.  
pas cele suyte pris del record; mes en ceo cas il est  
pris de record; par quei responez.—Et le pleintif alegea  
coment ses terres furent estenduz trop bas, et auxi qe  
la livere se fist de puis qe de la moite.—*Thorpe*.  
Vostre bref ne voet pas qe vous duisiez reaver partie  
arere pur ceo qe puis est livere qe ne duist estre;  
et si la matere fust tiele, vostre bref ferreit mencion  
de ceo; par quei nous demandoms jugement du bref.  
Qar jeo pose qe nous ussoms tout leve, par quei vous  
portasses *Scire facias* vers nous dacomter, le bref freit  
mencion par quei vous ne duisiez reaver vostre terre;  
auxi icy.—BAUK. Il est ore par sa suyte a defaire la  
primere extente, et de novel estendre come si rien  
fust fait, et donques vous serra livere ceo qe par resoun  
vous devez aver et nient puis.—*Pole*. Nous sumes  
seisi, par quei livere ne poet estre fait a nous; mes  
il suppose par sa plainte qil duist reaver partie et de  
ceo qe nous avoms, et ceo ne voet pas son bref la ou  
il nous fait garnir, &c.—BAUK. Il vous fait cortisie  
qil vous ad garny, qar par ley il avereit restente sanz  
nul garnisement, et issu ne se poet faire entre vous  
lequel lestent soit bien fait ou noun.—*Pole*. Si puis  
fust livere qe nous duist estre, il purreit del surplus  
aver assise.—*Thorpe*. Jammes; quant Vicounte par  
garrant et par colour livere terre, meqe il livere plus,  
ceo ne sera my recoveri par assise.—BAUK. Si bref  
isse a Vicounte de liverer seisine de xx., et il livere  
xxx., navera celi qe est oste lassise de x. ?—*Thorpe*.  
Noun, certes; qar par sa demande de xx. acres il purra

## No. 31.

A.D. 1841. of twenty acres he may recover forty and more.—*Pole* maintained that the extent was well made.—*BAUKWELL*. Now no averment shall be made between you, but only an inquest of office to re-extend.—And this was done.—And *Thorpe* said that if by a writ of *Elegit* the Sheriff delivers all the lands, one shall not have an assise for a moiety, for he may deliver an entirety as in lieu of a moiety of lands.—*Quære*.

Scire  
facias.

§ A moiety of A.'s lands was delivered by *Elegit*; afterwards A. sued a writ against the tenant by *Elegit* to warn him to show whether he could say anything wherefore the lands should not be re-extended.—*Pole*. The writ should have been a *Venire facias*, for it is purchased on suggestion.—*Scot*. The record is the warrant of the whole, and it would be too long a delay to sue by distress, &c.

Præcipe  
quod  
reddat,  
where  
several  
nontenures  
were  
alleged.

(31.) § *Præcipe quod reddat* by divers *Præcipes*, where nontenure was alleged on one *Præcipe*, because [as Counsel said] a writ was brought for other land against one who vouched us<sup>1</sup> long before this writ was purchased, and we<sup>1</sup> entered into warranty and lost before the date of this writ, wherefore it was adjudged that the demandant should recover against the tenant, and the tenant to the value against us, and, pending your writ, execution was made of parcel of your demand, and so we have lost, and he who sued execution has enfeoffed one A., who is tenant of the parcel; judgment of the writ. And as to another parcel in the same *Præcipe*, he alleged that another was tenant on the day on which the writ was purchased and still is; judgment of the writ.—But note that this last exception was given first.—*Gaynesford*. He alleges two nontenures on one and the same *Præcipe*, whereof one lies in fact and the other in law; and so let him hold to one.—*Pole*. Divers nontenures may be alleged, and all shall be

<sup>1</sup> A change of person has been made in the translation for the sake of harmony with the context.

## No. 31.

recoverir xl. et plus.—*Pole* maintient qe leste<sup>1</sup> fust A.D. 1341. bien fait.—*BAUK.* Ore ne se fra pas averement entre vous, mes soulement enquest doffice de restendre.—*Et ita factum est.*—Et *Thorpe* [dit] qe si par bref de *Elegit* le Vicounte liverast touz les terres un homme qil navera pas assise de la moite, qar il poet liverer un entier come en lieu de la moite des terres.—*Quæra.*

§ La<sup>2</sup> moyte des terre<sup>3</sup> de A. furent liveres par le *Elegit*; Scire pus A. suyt bref vers le tenant par le *Elegit* de luy garnir sil sceust rien dire pur quei les terre<sup>3</sup> ne serront reestendus. [Fitz *Scire* —*Pole.* Ceo deveroit estre *Venire facias*, qar cest purchas *facias*, par suggestion.—*Scot.* Le recorde est garrant de tot, et ceo 16.] serreit trop longe delaye de suyre par destresse, &c.

(31.)<sup>3</sup> § *Præcipe quod reddat* par divers *Præcipes*, *Præcipe* ou nountenure est allege en lun *Præcipe*, pur ceo qe *quod reddat*, ou bref fust porte dautre terre vers un qe lui voucha long-temps avant cestui bref purchace, et il entra et perdist plusours nontenurs avant la date de ceo bref, par quei fust agarde qe le *sonst* demandant recovereit vers le tenant, et il a la value *alleggez.* [Fitz. *Briefe*, 285.] vers nous, et, pendant vostre bref, execucion est fait de parçele de vostre demande, et issi avoms perdu, et celui qe suyst execucion ad feffe un A., qest tenant de la parçele; jugement du bref. Et quant a autre parçele en mesme le *Præcipe*, il alegea qautre fust tenant jour du bref purchace et uncore est; jugement du bref.—*Mes nota* qe cestui darein excepcion fust primes done.—*Gayn.* Il allege deux nountenu en un mesme *Præcipe*, dont lun chiet en fet lautre en ley; et si teigne a lun.—*Pole.* Homme poet aleger divers nountenuz, et touz

<sup>1</sup> T., lestatut.

<sup>2</sup> From T. alone.

<sup>3</sup> This report of the case is from L. alone.

## No. 32.

A.D. 1241. enquired of, and if the least be found against the demandant the writ falls to the ground; and also by divers recoveries divers nontenures may be alleged. Besides, nontenure by recovery abates the writ only as to the parcel. — *Thorpe*. A writ shall not be abated but by one issue; but if several nontenures which lie in fact be alleged, they shall be enquired of by one inquest, so that it is only one issue; but in this case there are two issues, one of record, the other averrable to the country, of which one, perhaps, will be found for the demandant, and the other will be found against him, whereupon a good judgment could not be made.—*HEPPESCOTES*. One may have two pleas, in abatement of the writ; if a man allege joint-tenancy of a parcel he shall answer as to the residue; and perchance he is not tenant of the whole, and then he can afterwards allege nontenure.—*Thorpe*. No; if he first allege joint-tenancy he will lose the exception of nontenure afterwards, and *e contra*; but if he allege nontenure on one writ and abate the writ, on another writ he will abate the writ by the exception of joint-tenancy, because he could not at first have both.—But some denied this.—And afterwards *Gaynesford* said *gratis*:—He is now fully tenant; ready, &c.—*Derworthy*. Then you do not deny that execution was sued, as above, since the writ was purchased, at which time the writ was in law abated.—*HILLARY*. He has nothing to do with that if you be now fully tenant, and therefore answer to this.—*Derworthy*. Ready, &c., that he is not.—And the other side said the contrary.

Wager of  
law ad-  
mitted.

(32.) § Note that the Grand *Cape* issued against one, who came and was, as it were, mad, of non-sane memory, as it seemed; wherefore the demandant did not dare to hold to his default at first; and afterwards he held to the default absolutely, and the other performed his law twelve-handed, and the writ abated.—*Quære*.

## No. 32.

serront enquis, et le meindre trove contre le demandant A.D. 1341.

le bref est a terre; et auxi poet par divers recoverirs aleger divers nountenures. Ovesqe ceo, la nountenure par recoverir abate pas le bref forsque de la parcele.—

*Thorpe.* Homme nabatera pas bref forsque par une issu; mes si plusours nountenures qe chiecent en fet soient alleges, eles serront enquis par une enquest, issi qe ceo nest forsqu'un issu; mes en ceo cas ils sont ij. issues, lun de record, lautre averable par pais, dont lun, par cas, chantera pur le demandant, lautre serra trove contre lui, sur quei bon jugement ne se purreit pas faire.—*HEPP.* Homme avera ij. plees, en<sup>1</sup> abatement du bref; si homme allege jointenance dun parcele il respondra del remenant; et par cas il nest pas tenant del entier, donques poet il apres alleger nountenu.—*Thorpe.* Nanyl; sil allege primes joyntenance il perde excepcion de nountenue apres, et *e contra*; mes sil allege nountenue en un bref et abate le bref, a un autre bref il abatera le bref par jointenance, pur ceo qil ne poait al primer aver lun et lautre.—*Quod quidam negarunt.*—Et puis *Gayn. gratis* dit qil est pleinement ore tenant; prest, &c.—*Derworth.* Donques ne dedites vous pas qe lexecucion fust suy, *ut supra*, puis le bref purchace, a quel tamps le bref fust abatu en ley.—*HILLARY.* Il nad qe faire si vous soietz ore pleinement tenant, et pur ceo responez a ceo.—*Derworth.* Prest, &c., qe noun.—*Et alii e contra.*

(32.)<sup>2</sup> § *Nota* qe grand *Cape* issit vers un, qe vient et fust come fole, de noun seyne memorie, come sembloit; par quei le demandant nosa prendre a sa defaute primes; et puis il prist atrenche a la defaute, et il fist sa ley *cum xii. manu*, et le bref abatist.—*Quære.*

Lay recou.  
[Fits.  
Saver de  
Defaute,  
41.]

<sup>1</sup> T., lun.

<sup>2</sup> From T. alone.

Nos. 33, 34.

A.D. 1341. (33.) § Entry in the *post*.—*Gayneford*. We demand view.—*Blaik*. You ought not to have view, for we tell you that we heretofore brought a little writ of Right against the tenant in respect of the same tenements, and we made protestation that we sued in the nature of the writ which we now sue, and he had view, and afterwards caused the parol to be removed, because he claimed to hold by fine and at common law; and that cause he maintained in this Court, and we could not deny that matter; wherefore our writ abated, and we have sued this writ against him; so view is not necessary; judgment.—*Gayneford*. He does not counterplead us by Statute<sup>1</sup> or by common law; judgment; and the first writ did not abate by exception given to the faultiness of the writ, but on account of the want of power in the Court where it was purchased.—And by award he had view.

Trespas. (34.) § Trespas. The Sheriff returned *Non sunt inventi*.—*Thorpe*. We pray the *Capias*.—KELSHULLE (JUSTICE). Where is the plaintiff?—*Thorpe*. He appears by attorney.—*Gayneford*. The defendants are here in their own persons, against whom he says nothing; judgment how they ought to depart.—*Thorpe*. They have not a day; and it can not be known whether they be the same persons or not.—KELSHULLE. The plaintiff is here by attorney, and he ought to know; but, perhaps, if he were essoined, notwithstanding the appearance of the defendants, a *Capias* would issue; but now if you do not count you will take nothing.—Therefore *Thorpe* counted of a taking of oxen against the peace in Gosfield.—*Rokell*. We tell you that one A. charged to us certain

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<sup>1</sup> 13 Ed. I. (Westm. 2.) c. 48.

## Nos. 33, 34.

(33.)<sup>1</sup> § Entre en le *post*.—*Gayn*. Nous demandons A.D. 1341.  
 la vew.—*Blayk*. La vewe ne devez aver, qar nous Entre.  
 vous dioms qe nous autrefoitz portames petit bref de [Fitz.  
 droit vers lui de mesmes les tenementz, et feimes View, 96.]  
 protestacion de suyr en nature de bref qe nous ore  
 suoms, et il avoit la vewe, et puis fist remuer la  
 parole, pur ceo qil clama tenir par fyne et a la  
 comune ley; et cele cause meintient en ceste Court,  
 quele chose nous ne poames dedire; par quei nostre  
 bref abati, et avoms suy vers lui ceo bref; issi nest  
 pas la vewe necessare; jugement.—*Gayn*. Il nous  
 contreplede pas par statut ne comune ley; jugement;  
 et le primer nabatist pas par excepcion done a la  
 defaute du bref, mes pur noun poair de Court ou il  
 fust purchace.—Et par agarde il avoit la vewe.

(34.)<sup>1</sup> § Trespas. La Vicounte retourna *Non sunt Trans-*  
*inventi*.—*Thorpe*. Nous prioms le *Capias*.—KELS. greasio.  
 (JUSTICE). Ou est le pleintif?—*Thorpe*. Par attourne.  
 —*Gayn*. Les defendantz sont cy en propre persone,  
 vers quex il dit rien; jugement coment il deivent  
 departier.—*Thorpe*. Il nount pas jour; et homme ne  
 poet pas saver sil soient mesmes les persones ou  
 noun.—KELS. Le pleintif est par attourne, et il deit  
 saver; mes, par cas, sil fust essone, *non obstante*  
 lapparaunce les defendantz, *Capias* issera; mes ore si  
 vous ne contes vous prendrez rien.—Par quei *Thorpe*  
 conta dune prise de boevz contre la pees en Gosfeld.  
 —*Rokel*. Nous vous dioms qun A. chargea a nous

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<sup>1</sup> From T. alone.



## No. 35.

A.D. 1341. tenements in Gosfield and D. for a certain rent, with a clause of distress, and for the rent in arrear we took the distress in D. and not in Gosfield.—*Thorpe*. He has admitted the taking, and he does not show any specialty giving him a cause for doing this; judgment.—*HILLARY*. He has traversed your plaint, inasmuch as he alleges the taking to have been effected in another vill, and to a specialty you can not have an answer.—And then *Rokell*, of his own accord, put forward a specialty.—*Thorpe*. He took them in Gosfield and not in D.; ready, &c.—And the other side said the contrary.

Trespass. (35.) § Trespass was sued against an Abbot and his co-monks and several others.—*Derworthy*. We say that the plaintiff released to the predecessor of this Abbot and to A., B., C., and D., his co-monks, and to all the convent, at a time at which this Abbot was a co-monk and named in the release; judgment whether an action, &c.; and for the secular defendants we demand judgment, since he released those named in the writ, and so all his action is extinguished, &c.—*Rokell* showed that at the time of the making of the release the plaintiff was in prison.—*Pole*. You can not say that; for heretofore in the Exchequer you acknowledged that deed—(and he cited the record);—judgment whether you shall now be admitted to avoid it.

## No. 35.

certeinz tenementz en Gosfeld et D. en certain rente, A.D. 1341. ove c[l]ause de destresse, et pur la rente arere nous prismes la destresse en D. et noun pas en G.—*Thorpe*. Il ad conu la prise, et il moustre pas especialte qe lui durreit cause de ceo faire; jugement.—*HILL*. Il ad traverse vostre pleint, de taint qe la prise se fist en autre ville, et al especialte ne puisse aver respouns.—Et puis *Rokel*, de gree, mist avant especialte.—*Thorpe*. Il les prist en G. et noun pas en D.; prest, &c.—*Et alii e contra*.

(35.)<sup>1</sup> § Trespas fust suy vers un Abbe et ses com-  
moignes et autres plusours.—*Derworth*. Nous dioms  
qe le pleintif releasa al predecessour cestui Abbe et  
A., B., C., et D., ses commoignes, et a tout le covent,  
a quel temps cestui Abbe fust commoigne et nome  
en le relees; jugement si accion; et pur les seculers  
demandoms jugement, del heure qil ad releasa a les  
unes nomes en le bref, issi toute saccion esteinte, &c.  
—*Rokel* moustra qal temps de la confeccion il fust  
enprisonne.—*Pole*. Ceo ne poez dire; qar autrefoitz en  
leschequer vous conisastes ceo fet; et alegea le record;  
jugement si ore de voider le serrez rescen.

Trans-  
gessio.

<sup>1</sup> From T. alone. The record of this case is among the *Placita de Banco*, Trinity, 15 Edw. III., B°. 154. It there appears that the action was brought by John le Spicer, of Abingdon, against Roger, Abbot of Abingdon, four "fratres" named, "commonachi ejusdem Abbatis," and nine other persons (one the wife of one of the defendants) for that "vi et armis domus ipsius Johannis le Spicer frugerunt." It was further alleged in the declaration that the defendants carried away "maeremium inde ac alia

" bona et catalla sua ibidem inventa, videlicet aurum, argentum, plumbum, et quoddam aliud metallum vocatum mastilloun." The damages were laid at 1,000*l*. The Abbot and "commonachi" pleaded the plaintiff's release of all actions (dated in the 6th year of the reign) to Robert formerly Abbot of Abingdon, and co-monks, and servants of the Abbot named in the "scriptum." The others named in the writ pleaded "quod cum prædictus Johannes le Spicer per prædictum scriptum suum

## No. 36, 37.

A.D. 1341.  
Execution  
on a  
Statute.

(36.) § Execution on a Statute Merchant was awarded; and he on whom the execution was sued went into the Chancery, and made his suggestion how that he had made satisfaction to the party, and he showed the Statute which had been delivered up to him in lieu of acquittance, and he had a writ to the Justices stating his case, *quod vocatis partibus, &c.*—A *Venire facias* issued, and this writ came here, and was not served, nor was anything endorsed on the writ; therefore an *Alias Venire facias* issued, and the Sheriff was amerced in 20s.—And thereupon *Thorpe*, after the award, came and said that this suit was falsely sued, because it was by the assent of him who sued that his writ was not served; nor (said *Thorpe*) does he intend that the writ ever shall be served, for a *Supersedeas* of the execution has issued, and the party is here ready to plead with him.—HILLARY. You come too late, since he has gone with his day; if you had come in time, it would have been otherwise; and therefore be advised.—At another day *Thorpe* said, We pray that he may make an attorney on the roll.—HILLARY. Do so by bill.—*Thorpe*. He could not make any bill in this case.—HILLARY. Go then to the Chancery; and I advise that you yourself sue that the writ may be served.

Præcipe  
quod  
reddat.

(37.) § A *Præcipe* was brought against Henry son of Henry de Wylyngton, [in respect of tenements] into which he had not entry but by Henry de Wylyngton; and the words of the subsequent writ [of summons] were, "Summon the aforesaid Henry."—*Thorpe*. Judg-

" remisit omnimodas actiones per-  
" sonales, ut prædictum est, non  
" intendunt quod ipse actionem,  
" versus eos habere debeat, unde  
" petunt iudicium." Spicer re-

plied that the Abbot and the rest  
" in Warda de Baynardescastel,  
" in parochia Sancti Benedicti,  
" Londoniarum, vi et armis cepe-  
" runt ipsum Johannem et ipsum

## Nos. 36, 37.

(36.)<sup>1</sup> § Execucion sur estatut marchant fust agarde; A.D. 1341. et celui sur qi execucion fust suy ala en la Chauncellerie, et fist sa suggestioun coment il avoit fete gree a la partie, et moustra lestatut qe lui fust liveres en lieu dacquittance, et avoit bref as Justices compernant son cas, *quod vocatis partibus, &c.*—Venire *fucias* issit, et cest bref vient cy, et ne fust pas servy, ne rien fust endoce sur le bref; par quei *Sicut alias* issit, et le Vicounte amercie a *xxs.*—Et sur ceo *Thorpe*, apres lagarde, vient et dit coment cele suyte est fausement suy, qar del assent celui qe suyst qe son bref nest pas servy; ne jammes ne voet qe bref soit servy, qar *Supersedeas* del execucion est issu, et la partie est cy prest a pledre ovesqe lui.—HILL. Vous venez trop tard, quant il est ale ove son jour; si vous ussez venu par temps, autrement ust este; et pur ceo avisez vous.—A un autre jour, *Thorpe*. Nous prioms qil poet faire attourne en rouble.—HILL. Fetes par bille.—*Thorpe*. Il freit nul bille en le cas.—HILL. Ales donques a la Chauncellerie; et jeo loie qe vous sues mesmes qe le bref soit servy.

(37.)<sup>2</sup> § *Præcipe* fust porte vers Henry fitz H. de Wylyngtoun, en les queux il nad entre si noun par Henry de Wylyngtoun; et puis voleit le bref, *Summoneas prædictum Henricum.*—*Thorpe*. Jugement du

*Præcipe*  
quod  
reddat.

" abinde usque hospitium domini  
" Willelmi Lovel in eadem Warda  
" duxerunt et ibidem imprison-  
" averunt, et in prisona, quousque  
" per coercionem et duritiem pri-  
" sonæ fecit eis scriptum illud, de-  
" tinnerunt." Of this he tendered  
averment. The Abbot and the rest  
rejoined that Spicer could not allege  
the imprisonment "in evacuationem  
" et adnullationem scripti," because  
Spicer acknowledged it to be his

deed of his own free will, and had  
it enrolled in the Exchequer on his  
own prayer. "Et postea prædictus  
" Johannes le Spicer solemniter  
" vocatus non est prosecutus, &c."

<sup>1</sup> From T. alone.

<sup>2</sup> From T. alone. The record of  
this case (in which, however, the  
technical objections to the summons  
and re-summons are not men-  
tioned) is among the *Placita de*  
*Banco*, Trinity, 15 Edward III.,

## No. 38.

A.D. 1341. ment of the writ; for in the summons he has not made certain which Henry is to be summoned.—HILLARY. You have had view; and even if you had taken exception to the writ in time, still it would be good.—Thorpe. We have a day by the re-summons in the words, "Summon Henry de Wylyngton;" so it is not warranted; judgment.—And it was examined and found to be sufficiently accordant.—Thorpe. Other re-summonses have issued which are not warranted.—And he was told to have them on the morrow to be examined with respect to his exception.—Quære to what purpose.

**Avowry.** (38.) § Note that one avowed for *damage feasant*, in his several in L., as in right of his wife.—Thorpe. Our common is appendant to our freehold in K.—Pole. You can not say that; for the two villis do not intercommon; ready, &c.—Thorpe. Seised from time whereof there is no memory; ready, &c.—Pole. Not seised as appendant.—HILLARY. Either admit the seisin, and show that it was other than is supposed, or traverse it.—Pole. Not seised from all time as he alleges; ready, &c.—And the other side said the contrary.—Pole. We pray aid of our wife.—And he had it. And he was told to produce his wife.

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R<sup>o</sup>. 163. It there appears that the action was brought by James de Cokyngton against Henry son of Henry de Wylyngton in respect of the manors of Gydesham and Lomene Richard (Devon) (with certain exceptions) "in quæ non habet ingressum nisi per Henricum cum de Wylyngton cui Christina de Lomene consanguinea prædicti

" Jacobi, cujus heres ipse est, illa dimisit dum non fuit compos mentis sue." The tenant said that Christina was "compos mentis sue." Issue was joined to the country on that point. The demandant did not come on the day given at *Nisi prius*, and judgment passed for the tenant.

## No. 38.

bref; qar il nad pas determine en la somons quel A.D. 1341. Henry duist estre somons.—HILL. Vous avez eu la vew; et mesqe vous lus-ez chalenge a temps, uncore le bref serreit bon.—Thorpe. Nous avoms jour par resomons, qe voleit, *Summoneas Henricum de Wylyngtone*; issint nient garranti; jugement.—Et fust vew et est assetz acordant.—Thorpe. Autres resomons sont issues qe ne sont pas garrantiz.—Et dit lui fust qil les ust lendemene destre examine sur son chalenge.—*Quære* a quel effect.

(38.)<sup>1</sup> § *Nota* qun. avowa pur damage fesant, en Avowri. son several en L, come del dreit sa femme.—Thorpe. Nostre comune apend a nostre frank tenement en K.—Pole. Ceo ne poez dire; qar les ij. villes nentre-comunent pas; prest, &c.—Thorpe. Seisi du temps dont memorie nest; prest.—Pole. Nient seisi come appendant.—HILL. Ou conises la seisine, et moustrez qele fust autre, ou la traversez.—Pole. Nient seisi de tout temps come il allege; prest, &c.—*Et alii e contra*.—Pole. Nous prioms eide de nostre femme.—*Et habet. Dictum est ei quod habeat uxorem.*

<sup>1</sup> From T. alone. The case seems to be that of which the record is found among the *Placita de Banco*, Trinity, 15 Edw. III., B<sup>o</sup>. 46. It there appears that Robert de Sadyngton brought his action of Replevin against Robert Wyville, knight, and John de Mekeneye Haywod in respect of an alleged taking in a place called Brendewod in Sadyngton's common pasture. The avowry was for damage fessant in Wyville's several, where Sadyngton had no common. To this it was pleaded that Sadyngton and "Jocosa," his wife, were

lord and lady of the manor of Nosley (in the county of Leicester) as in right of Jocosa, and that they had common (in tenements whereof the place in which the taking was effected was parcel) as appurtenant to their manor "*videlicet quibuslibet " duobus annis post blada secata " et unita quousque tenementa illa " interim seminentur, et quolibet tertio anno per totum annum, " cum omnimodis averiis suis, de " qua communia ipsi Robertus de " Sadyngtone et Jocosa, ut de jure " ejusdem Jocose, et omnes illi " qui manerium de Nousele præ-*

Nos. 39, 40.

A.D. 1341. (39.) § Note that the Abbot of Newenham recovered an advowson against John Carrou, &c., by final judgment, and by default after the mise; and execution was stayed on account of collusion.

Oyer and  
Terminer.

(40.) § In an Oyer and Terminer before certain Justices, &c., a *Venire facias* issued. The Sheriff returned that the persons were not found, and that no one would be mainprise for them. And upon this return the Justices awarded the Grand Distress, so that their issues were forfeited to the amount of 40*l.*; wherefore, pending the suit against them, they caused the record to come before the King by writ of Error. And Pole assigned the error, viz., that whereas the *Venire facias* was in the nature of a Distress, and the writ, being of that nature, was not served, as appears above, in which case the Sheriff ought to have been amerced and an *Alias venire facias* awarded, the Justices adjudged the return good; and therein they erred.—*Thorpe*. The record has come into this Court without warrant; for the writ by which it has come supposes the judgment to be given, and no judgment has yet been given; and, by law, pending a suit, one shall not have Error, for by chance he will be acquitted in the principal suit.—*Pole*. What of that? Still by the erroneous award of the distress he loses his issues,

“ dictum tenuerunt, a tempore quo  
“ non extat memoria, fuerunt seisisi  
“ de prædicta communia tanquam  
“ pertinente ad manerium prædic-  
“ tum,” whereof averment was  
tendered. It was replied that  
neither Robert, nor Jocosæ, nor  
any tenant of the manor had been  
seised of the common as appur-  
tenant to the manor, whereof aver-  
ment was tendered. “ Quam qui-  
“ dem verificationem prædictus  
“ Robertus de Sadyngtone sine

“ prædicta Jocosæ expectare non  
“ potest. Ideo dictum est eidem  
“ Roberto de Sadyngtone quod  
“ habeat hic a die Sancti Michaelis  
“ in xv. dies per Justidarios præ-  
“ dictam Jocosam uxorem suam  
“ ad manutenendam verificationem  
“ prædictam si, &c.” On appear-  
“ ance Jocosæ “jungit se prædicto  
“ Roberto de Sadyngtone manu-  
“ tenendo verificationem prædic-  
“ tam.” There follows the award  
of the *Venire*. The jury found

## Nos. 39, 40.

(39.)<sup>1</sup> § *Nota* qe Labbe de Newenham recoveri une A.D. 1341.  
 avoiesoun vers Johan Carrou, &c., par jugement Nota.  
 fynal, et par defaute apres la myse; et execucion  
 cesse pur la collusion.

(40.)<sup>2</sup> § En un Oier et Terminer devant certains Oier et Terminer.  
 Justices, &c., *Venire facias* issit. Le Vicounte re-  
 tourna *Non sunt inventi, nec aliquis eos manucapere*  
*volebat*. Et sur ceo retourn les Justices agarderent  
 la graund destresse, issi qe lour issues furent forfait  
 a la montance de xlii.; par quei, pendant la suyte  
 vers eux, il firent venir le record devant le Roi  
 par bref derroure. Et *Pole* assigna lerroure, qe la,  
 ou le *Venire facias* fust en nature de destresse, et  
 cel bref en sa nature ne fust pas servy, *ut patet*  
*supra*, en quel cas le Vicounte duist aver este amercie  
 et *Sicut alias* agarde, les Justices lagarderent pur  
 bon retourn, en taunt errerent.—*Thorpe*. Le record  
 est venu ceinz saunz garrant; qar le bref par quel  
 il est venu suppose le jugement estre rendu, et nul  
 jugement est uncore fait; et, par ley, pendant une  
 suyte, homme navera pas errour, qar par cas il serra  
 acquite en la principale suyte.—*Pole*. De ceo qay?  
 Uncore par lagarde de la destresse erroigne il perde

for Sadyngton and his wife with damages 40s. On the back of the roll is another case, differing only in that in the latter the co-defendants with Wyville are John Doune and John Scot.

<sup>1</sup> From T. alone. In the record of this case (*Placita de Banco*, Trinity, 15 Edw. III., R. 244, d.) it appears that a writ of Right of Advowson was brought by the Abbot of "Neweham," or Newenham, against John de Carru and Eleanor late wife of Nicholas de Carru, in respect of the church of Louepitte (perhaps Luppitt,

Devon). The tenants joined the mise, and put themselves on the Grand Assise. The Abbot prayed leave to imparl and had it, and, after imparlance, John and Eleanor did not return. Judgment was then given for the Abbot, but, on account of suspicion of collusion, the Sheriff was directed to cause a jury to come "*ad recognoscendum Quale jus, &c.*" The jury found that there had been no collusion. The title is set out at length in the verdict.

<sup>2</sup> From T. alone.



## No. 41.

A.D. 1341. and he ought to have them back by his suit; and, when the Grand Distress was ordered by the Justices, that was a judgment, so that judgment was given as to that of which we complain; and the Abbot of Ramsey was in a like case, and in Parliament the judgment was reversed, and he had back his issues pending the plea.—*Thorpe*. Certainly, then, you ought to have had a special writ in your case.—BAUKWELL. That is true.—*Thorpe* prayed a *Superedeas* to the Sheriff in respect of the issues.

(41.) § Edmund de Bonyngton sued a writ of Account against one R.—*Thorpe*. He ought not to be answered,

## No. 41.

ses issues, et ceo covient il reaver par sa suyte; et, A.D. 1341. quant la graund destresse fust comande par Justices ceo fust un jugement, issi qe le jugement est rendu de ceo dont nous pleynoms; et en tiel cas fust Labbe de Rameseye, et en Parlement le jugement reverse, et reavoit ses issues pendant le plee.—*Thorpe*. Certes, vous duissez, donques, aver ceo especial bref sur vostre cas.—*BAUK*. Cest verite.—*Thorpe* pria *Supersedeas* a Vicounte des issues.

(41.) <sup>1</sup> § Edmund de Bonyngtoun <sup>2</sup> suyst bref dacompt vers un R.<sup>3</sup>—*Thorpe*. Il ne deit estre respondu, qar

<sup>1</sup> From T. alone. The record of this case is among the *Placita de Banco*, Trin., 15 Edw. III., R<sup>o</sup>. 334, d. It there appears that the action was brought by Edmund de Bonyngton against Robert del Grene of Ooton (Yorkshire). The defendant had, as alleged in the declaration, been receiver of the plaintiff's money (20*l.*), which had been delivered to him "ad mer-  
"candisandum," and this was acknowledged by the defendant in his *scriptum* produced. Robert appeared in person, and pleaded that Edmund ought not to be answered, because "coram Ricardo de Wil-  
"ughby et sociis suis Justiciariis  
"domini Regis ad placita coronarum  
"coram ipso Rege tenenda assignatis indictatus fuit de morte  
"Roberti de Willesthorpe et de  
"burgaria domus Johannis de  
"Thirnum apud Thirnum," and because he had not been found, and had been outlawed. Edmund replied that there was no such record of outlawry *coram Rege*, and Robert was then told to produce the record on a certain day. Six

persons "manuceperunt Robertum  
"del Grene" to produce his body on the day given and until the termination of the plea. Robert did appear on the day, but, "relicta  
"exceptione sua," said he was ready to account. "Ideo con-  
"sideratum est quod computet,  
"&c., et assignantur ei auditores  
"videlicet Johannes de Assheby  
"et Petrus de Hoo, &c. Et in-  
"terim idem Robertus commit-  
"titur Gaolæ de Flete, &c." Both parties appeared before the auditors, and Robert gave an account of the goods he had bought (among which were jewels "dum  
"phialæ de crystallo plenas de  
"reliquiis pretiosis," &c., &c.). Edmund said he had not received the goods as stated, and on this issue was joined to the country. Robert was now let out on mainprise, and appeared on the day given, but Edmund did not appear against him, and so judgment was given for the defendant.

<sup>2</sup> T., Boyntoun.

<sup>3</sup> T., A.

Nos. 42, 43.

A.D. 1341. because he is outlawed for felony.—And *Thorpe* alleged with certainty the record in the King's Bench.—*Blaik*. Produce your record.—*Thorpe*. Willingly.—*Blaik*. The defendant comes by the Exigent, and therefore he shall find mainprise.—*Thorpe*. There is no inquest to be taken.—*HILLARY*. What of that? He shall find mainprise or he shall remain [in custody].—And he found mainprise.—*Quære*.

Crown. (42.) § A chaplain was indicted for abetting and counselling, &c. the death of a man; and he alleged that the principal was acquitted; and thereupon the roll was searched; and it was found that the principal killed the man *Se defendendo*, and that afterwards the King pardoned him by charter.—*SCOT*. He is rather absolved than acquitted, for his chattels are forfeited.—*BAUKWELL*. The principal is acquitted of the felony; for by law it is not a felony, and, consequently, this one is not to be arraigned for having been accessory.—*SCOT*. It is true.—Therefore the person indicted went quit.

*Quære  
impedit.*

(43.) § The King brought a *Quære impedit* against J. Segburghe, in respect of a prebend in Southwell, by reason of the Archbishoprick of York being in his hands.—*Pole* alleged plenarty for a year before the making of the new Statute<sup>1</sup> regarding the clergy.—*Thorpe*. Look at the Statute<sup>1</sup>; it saves to him his presentation three years before the making of

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<sup>1</sup> 14 Edw. III., St. 4., c. 2.

## Nos. 42, 43.

il est utlage pur felonye; et allega le record en cer- A.D. 1341.  
tein en Bank le Roi.—*Blaik*. Eie vostre record.—*Thorpe*. Volunters.—*Blaik*. Le defendant vient par exigend, par quei il trov[er]a meynprise.—*Thorpe*. Il ny ad pas enquest a prendre.—*HILL*. De ceo quei? Il trovera maynprise ou il demora.—Et il trova meynprise.—*Quære*.

(42.)<sup>1</sup> § Un chapleyn fust endite del abet et le De Corona.  
voie, &c., del mort un homme; et il allega qe le [Fitz.  
principal fust acquite; et sur ceo rolle quis; trove Corone et  
fust qe le principal le teua soi defendant, et qe puis Pleas de  
le Roi lui pardona par sa chartre.—*SCOT*. Il est pluis Corone,  
soille qe acquite, qar ses chateux sont forfaitz.—*BAUK*. 116; 15  
Le principal est acquite de la felonie; qar par ley Li. Ass.,  
ceo nest pas felonie, *nec, per consequens*, cestui del 7.]  
accessorire nest pas arenable.—*SCOT*. Cest verite.—Par  
quei il passa quites.

(43.)<sup>2</sup> § Le Roi porta *Quare impedit* vers J. Seg- Quare  
burghe, dune provandre en Suthewelle, par cause del impedit.  
Evesqe Deverwyk en sa mayn.—*Pole* allega plenerte  
un an avant la fesaunce del novel estatut fait a la  
clergie.—*Thorpe*. Veez lestatut; et il sauf a lui son  
presentement iij. aunz avant la fesaunce de lestatut

<sup>1</sup> From T. alone.

<sup>2</sup> From T. alone. The record of this or a similar case is among the *Placita de Banco*, Trin., 15 Edw. III., B<sup>o</sup>. 322. It there appears that the action was brought by the King against Henry de Harwedone in respect of the prebend of Dunham "in ecclesia Beato Maris de Suthwelle, que vacat, et ad Regis spectat donationem, ratione Archiepiscopatus Eboracensis vacantis et in manu Regis existentis." The count was that

" prædicta præbenda vacavit et  
" vacans fuit quousque temporalia  
" Archiepiscopatus prædicti per  
" mortem Willelmi de Meltone  
" nuper Archiepiscopi Eboracensis  
" . . . . devenerunt in manum  
" domini Regis." The plea was  
that " præbenda illa non fuit vacans  
" tempore mortis prædicti Willelmi  
" de Meltone nec unquam postea."  
Issue was joined thereon. Henry  
did not appear on the day given,  
and judgment was rendered for  
the King.

## No. 44.

A.D. 1341. the Statute as well as after.—Examine the Statute well.—And then they were at issue on the plenarty, &c., by the Statute.<sup>1</sup>

Avowry. (44.) § Note that the deputies of those who were appointed by the King's commission to collect the ninth granted to the King, of sheaves, lambs, and fleeces, cast according to the extent of the Church, &c., avowed the taking of the plaintiff's beasts, because he was assessed by his neighbours at a certain sum, and, because he did not pay, they avowed. And to this the exception was taken that they did not show the commission. And thereupon there was a diversity of opinion as to whether they ought to avow without a special warrant or not. And afterwards, by consent, they were at issue whether the tenements were in one parish or in another. And the taking was supposed in the vill of Appleby, and they agreed that the taking was made in a place which is parcel of a hamlet of Appleby; but whether the hamlet was in the parish of Appleby or not, on that they were at issue.

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<sup>1</sup> 14 Edw. III., St. 4., c. 2.

## No. 44.

come puis.—*Vide statutum bene*.—Et puis furent a issu A.D. 1341. sur la plenerte, &c., par statut.

(44.) <sup>1</sup> § *Nota* qe les deputes de ces qe furent Avowri. assignez par commission le Roi de coiller la ix<sup>me</sup> grante au Roi, de garbes, aigneux, et tesouns, qe fust gettu solonc lestente desglise, &c., avowerent la prise des bestes le pleintiff, pur ceo qil fust assis par ses veysyns en certain, et, pur ceo qil ne paia pas, il avowerent. Et ceo fust chalenge qil ne moustre pas commissioun. Et sur ceo fust diversite dopinioun le quel il duissent saunz garrant especial ou noun avowere. Et puis, de gree, il furent a issu le quel les tenementz furent en une paroche ou autre. Et la prise fust suppose en la ville de Appelby, et il furent a un qe la prise se fist en un lieu qest parçelle dun hamele de Appelby; mes le quel le hamel soit en la paroche de Appelby ou noun, et sur ceo sont il a issu.

<sup>1</sup> From T. alone. It appears by the record (*Placita de Banco*, Trin., 15 Edw. III. R. 285) that the action of Replevin was brought by John del Isle, knight, against Robert son of Stephen de Appelby, Philip Mody, and Alan Northiby. The defendants avowed the taking  
 “ quia dicunt quod Abbas de Bar-  
 “ denay, et Johannes de Bayous,  
 “ chivaler, et socii sui assignati  
 “ fuerunt per commissionem do-  
 “ mini Regis ad respondendum  
 “ domino Regi in partibus de  
 “ Lyndeseye in comitatu prædicto  
 “ [Lincoln] de nona garbarum,  
 “ vellerum, et agnorum, et ad  
 “ inquirendum coram ipsis Abbate  
 “ et Johanne de Bayous de valore  
 “ nonæ garbarum, agnorum, et  
 “ vellerum de qualibet villata in  
 “ partibus prædictis, et per eandem

“ commissionem iidem Abbas et  
 “ Johannes de Bayous habuerunt  
 “ warrantum ad assignandum et  
 “ onerandum duos homines cujus-  
 “ libet villatæ partium prædictarum  
 “ ad assidendum et levandum  
 “ verum valorem dictæ nonæ de  
 “ hominibus cujuslibet villæ in  
 “ partibus prædictis. Et quia com-  
 “ pertum fuit quod nona garbarum,  
 “ agnorum, at vellerum prædictæ  
 “ villæ de Appelby valebat novem  
 “ libras et decem solidos, per quod  
 “ iidem Abbas et Johannes de  
 “ Bayous oneraverunt ipsos Phil-  
 “ ippum et Alanum ad assidendum  
 “ et levandum de hominibus præ-  
 “ dictæ villæ de Appelby prædictas  
 “ novem libras et decem solidos et  
 “ de illis novem libris et decem  
 “ solidis domino Regi responden-  
 “ dum. Et dicunt quod prædictus

Nos. 45, 46.

A.D. 1341. (45.) § Attachment on Prohibition was sued to the Sheriff of Northampton for that the defendant made provocations, appeals, &c., contrary to the Prohibition, &c., in respect of a church, &c., which the King recovered; and he counted that the appeals were made to the Court of Arches of London, and the writ was "Attach, so that you have him."—The defendant came in custody of the Sheriff.—*Thorpe*. This writ issued, contrary to law, to attach a man by his body, when by law he ought to be attached by pledges, in which case he would make his attorneys.—*Scot*. We have spoken in the Chancery about this matter, and they say that such is their custom for the King, when the King has had judgment for himself, whosoever afterwards attempts his right, &c.; therefore plead something else.—*Thorpe*. The writ is directed to the Sheriff of Northampton, and he assigns the appeals as having been in London; judgment of the writ.—*Pole*. It is possible that the provocations, &c., commenced in the County of Northampton, and afterwards, by appeal, were prosecuted in the Court of Arches of London, and thus the writ is good, as in the case of a writ of Account for receipts in divers counties.

Scire  
facias.

(46.) § Thomas Browes heretofore sued a *Scire facias* upon a fine against John de Moubray, in the 12th year, in the King's Bench; and, because John was in the King's service, the King directed his Justices that they should continue the plea from one day to another until the Octaves of St. John, and that the said Justices should be on the same day at

"Johannes del Isle assessus fuit  
"pro nona garbarum suarum in  
"prædicta villa ad decem et octo  
"solidos. Et, quia prædictus Jo-  
"hannes del Isle prædictos decem

"et octo solidos ad quos assessus  
"fuit pro nona garbarum suarum  
"solvere volebat, pro decem solidis  
"de prædictis decem et octo solidis  
"ceperunt ipsi prædictos equos in

Nos. 45, 46.

(45.) <sup>1</sup> § Attachement sur prohibicion fust suy a A.D. 1341. Vicounte de Northamtone de ceo qe le defendant fist provocacions, apels, &c., contre la prohibicion, &c., dune eglise, &c., qe le Roi recoverist; et conta qe les apeles furent faitz a les Arches de Loundres, et le bref fust atache *ita quod habeas eum*.—Le defendant vient en gard le Vicounte.—*Thorpe*. Ceo bref issist, contre ley, dattacher homme par son corps, ou par ley il serroit atache par plegges, en quel cas il freit ses attournes.—*Scot*. Nous avoms parle en Chauncellerie de ceste matere, et il dient qe lour usage est tiel pur le Roi, quant le Roi ad eu jugement pur lui, qi qe apres attempt son dreit, &c.; pur ceo dites autre chose.—*Thorpe*. Le bref est direct a Vicounte de Northamtone, et il assigne les apeles en Londres; jugement du bref.—*Pole*. Poet estre qe les provocacions, &c., comencerent en le [counte] de Northamtone, et puis, par apel, sont suys en les Arches a Londres, et issi le bref bon, come en bref dacompt de resceites en divers countes.

(46.) <sup>1</sup> § Thomas Browes suyst autrefoitz *Scire facias* hors dune fyne vers Johan de Moubray, lan xij., en Bank le Roi; et, pur ceo qe Johan fust en service le Roi, le Roi manda a ses Justices qil continuassent le plee de jour en autre tanqe les utaves de Seint Johan, et qe les dites Justices fussent a mesme le jour a

Attache-  
ment sur  
Prohibi-  
cion.

Scire  
facias.  
[Fitz.  
Nonsuit,  
25.]

"prædicto loco, prout eis bene  
"lieuit, &c." John del Isle  
pleaded that Lyleford, the place  
of taking, "est quidam parvus  
"hamelettus separatus par metas  
"et bundas de prædicta villa de  
"Appelby . . . qui quidem locus  
"de Lyleford est in parochia de  
"Rysby," and that he had been

assessed and had paid what was  
due in that parish. Philip and  
Alan replied that the place was  
in the parish of Appleby. Issue  
was joined thereon. Afterwards,  
at *Nisi prius*, John del Isle failed  
to appear, and judgment was given  
for the defendants.

<sup>1</sup> From T. alone.



## No. 46.

A.D. 1341. Westminster. And on the first day of the Octaves, Thomas, being called, did not come, and this was recorded; but on the fourth day he proffered himself, and judgment was demanded of non-suit. And for Thomas it was alleged that before the fourth day no judgment should be given, because the words of the record are "on the fourth day he proffered himself," so that all the four days are saved for the advantage of the parties, and also this Court is removable and removed then.—SCOT. You have a day within the same term, so that perhaps it is different from what it would be if you had a day in another term, for you can not in this case be aided by the four days.—Pole. The Octaves comprise four days, and therefore this adjournment is different from a mere adjournment from one day to another. And since that time you find clearly that divers adjournments have been made, and process has been continued between the parties, so that this can not now be adjudged a non-suit. On the other hand, the parol then demurred by reason of a Protection, and afterwards regarnishment was made, so that he who put the plea without day affirmed the plea to be pending.—BAUKWELL. It is strange to adjourn parties on non-suit or on essoin.—And afterwards they were adjourned until Michaelmas term, at which time the process was rehearsed as above.—SCOT. The adjournment was by virtue of the King's writ from the Quinzaine of Trinity until the Octaves of St. John, which is in the same term, and the writ purported that the process should be continued from one day to another until the Octaves, &c., which is not an adjournment to a day of the term, but as to that particular day; for in such case, although this were another plea [other than a *Scire facias*], the party would not be essoined; and by rigour of law, even though this were an

## No. 46.

Westmoustier. Et le primer jour des utaves, Thomas, A.D. 1341. demande, ne vient pas, et ceo fust recorde; mes al quarte jour il se profi y, et fust demande jugement sur la noun suyte. Et pur Thomas est alege qe devant le quarte jour homme ne fra pas jugement, qar le record voet "*quarto die optulit se*," issi qe touz les iiij. jours sont sauves en avantage des parties, et auxi ceste place est remuable et remua a donques.—SCOT. Vous avez jour deinz mesme le terme, issi qe par cas cest autre qe si vous ussetz ew jour a un autre terme, qar vous ne poetz mye en ceo cas estre eide par les iiij. jours.—Pole. Les utaves compnerent iiij. jours, qar ceste autre ajournement qe de jour en autre. Et puis cel temps vous trovez bien qe divers ajournementz ount este fait, et proces continue entre parties, issi qe ceo ne poet ore estre agarde noun suyte. Dautre parte, la parole puis demora par proteccion, et puis regarnisement fait, issi qe celui qe myst le plee saunz jour il afferma qe la parole fust pendante.—BAUK. Cest merveil dajourner parties sur noun suyte ou sur essone.—*Et postea adjornantur* tanqe le terme Seint Michel, a quel temps fust reherce le proces *ut supra*.—SCOT. Lajournement fist par bref le Roi de la xv. de la Trinite tanqe les utaves Seint Johan, qest auxi qen mesme le terme, et le bref voleit qe le proces serreit continue de jour en autre tanqe les utaves, &c., qe nest pas ajournement par jour du terme, mes auxi come a mesme le jour; car en tiel cas, mesqe cest fust autre plee, la partie ne serreit essone; et de reddour de ley, mesqe ceo fust ajourne-

## No. 47.

A.D. 1341. adjournment of a term in another Court, nonsuit might be recorded on the first day, although it be not the custom in this Court, because this Court is removable; and this plea has been long pending. Therefore, John, Adieu; and do you, Thomas, sue another writ if you please.

Indict-  
ment.

(47.) § John son of John de Manby, of Beverley, was indicted for the death of Adam Copandale, and the indictment was caused to come into the King's Bench; and thereupon an Exigent issued, pending which Exigent John surrendered, and was arraigned, and took to his clergy, &c., and as a clerk convict was delivered to the Ordinary, and afterwards was outlawed, and then, while the See of the Archbishop of York was vacant, he made his purgation there, and had a letter from the Chapter of York, guardians of the spiritualities, the Dean being in a foreign land, testifying his purgation. And he came into the King's Bench and showed the letter, and prayed that the Court would proceed to annul the outlawry; and he assigned for error, as appears by the record, that the outlawry was pronounced against him after he had surrendered and had been delivered to the Ordinary, so that thereby judgment was given, and the indictment was determined and had lost its force.—*Stouford*. You see clearly that the letter has not come before you by warrant, and also there is a variance between the letter and the indictment, for the words of the letter are "John de Manby son of John de Manby of Beverley," and those of the indictment "John son of John de Manby," &c. Besides, the letter of the Chapter can not enable or disable the party, especially when the Dean is not named.—*Thorpe*. The letter has come sufficiently by warrant, for this letter which testifies his purga-

## No. 47.

ment dun terme en un autre place, homme purra A.D. 1341. recorder la nounsuyte le primer jour, tout ne soit pas use en ceste place, pur ceo qele est remuable; et ceo plee ad pendu longement. Par quei, Johan. ales adieu; et, Thomas, suez autre bref si vous voillez.

(47.) <sup>1</sup> § Johan fitz Johan de Manby, de Beverlee, <sup>Endite-</sup> fust endite de la mort Adam Copandale, et lendite-<sup>ment.</sup> ment fait venir en Bank le Roi; et sur ceo exigende <sup>[Fitz. Utlagerie, 2.]</sup> issit, pendant quel exigende Johan se rendy, et fust arene, et se prist a sa clergie, &c., et come clerc atteinte livere al ordiner, et puis fust utlage, et puis, vacant la cee del Ercevesqe Deverwyke, il fist sa purgacion illoeqes, et avoit la lettre du chapitre Deverwyke, gardein del espirituelte, le Dean esteant en estrange terre, tesmoignant sa purgacion. Et vient en Bank le Roi et moustra la lettre, et pria qe Court voleit aler al anientisement del utlagerie; et assigna pur erreur, come piert par le record, qe lutlagerie fust pronuncie en lui apres ceo qil savoit mys et livere fust al ordiner, issi qe par tant le jugement fust fourny, et lenditement termine et perdy sa force.—*Stouf.* Vous veez bien qe la lettre ne est venu devant vous par garrant, et auxi y ad variance entre la lettre et lenditement, qar la lettre voet Johan de Manby fitz Johan de Manby de Beverlee, et lenditement est Johan fitz Johan de Manby, &c. Ovesqe ceo, la lettre de chapitre ne poet faire partie able ne noun able, et nomement quant le Dean nest past nome.—*Thorpe.* La lettre est venu assetz par garrant, qar ceste lettre qe tesmoigne sa purgacion,

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<sup>1</sup> From T. alone.

## No. 47.

A.D. 1341. tion, which is in lieu of acquittal, remains with him who is purged, and with none other. And the variance which you assign is nothing, although there be more in the letter, &c. And as to the third point, since the Archbishop is dead, the Dean and Chapter are guardians of the spiritualities; if the Dean be out of the country, as he is now, the Chapter is in the place of the Ordinary, and if the Court were to send a writ, &c., they would execute it, &c. When the Court can see the record in express words and the error therein, even though he did not show any letter, they ought to proceed to a reversal.—BAUKWELL. Never in this case; for he has refused secular judgment, and has elected; wherefore until he be delivered spiritually we have nothing to do with making him answerable.—SCOT. The Sheriff did not do wrong in pronouncing the outlawry, for no *Supersedeas* came to him, and you ought to have sued it. And we have seen in such a case that when a party has alleged purgation one has sent to the Ordinary, in order to be certified whether he was duly purged. And also we do not know whether he was in prison continually from the time when he was delivered to the Ordinary until he was purged. And therefore we will consider; and do you sue that which shall appear to you necessary to be done, and await your days until the Octaves of St. Michael.—And John, by grace, went on mainprise; and he had not then yet certified the Court further of his purgation.—*Thorpe*. There is nothing except the suit of the King to prevent the outlawry from being reversed. And I say that it is to the King's advantage that he should reverse it; for while the outlawry stands in force the King will only have the year and waste of his lands, and the chief lord will have the escheat of his land; and if it were

## No. 47.

gest en lieu dacquittance, demoert vers lui qe est purge, A.D. 1341. et nul autre. Et la variance qe vous assignez est nul, tout eit pluis en la lettre, &c. Et a terce point, quant lercevesqe est mort, Dean et Chapitre sont gardeins del espirituelte; si Dean soit hors de terre, come est ore, le Chapitre est en lieu dordiner, et si Court mandast bref, &c., et il freit execucion, &c. Quant Court poet expressement veer le record et lerroure leinz, tout ne moustra il nule lettre, il duissent aler al reverser.—BAUK. Jammes en ceo cas; qar il ad refuse seculer jugement, et ad eslieu; par quei tanqil soit delivers espiritel nous navoms qe faire de lui faire responsable.—SCOT. Le Vicounte ne fist pas malement en le pronuncier del utlagerie, qar *Supersedeas* ne lui vient pas, et ceo duisses aver suy. Et nous avons vew en tiel cas qe quant partie ad alege purgacion homme ad mande al ordiner, destre acerte si fust duement purge. Et auxi si de tout temps puis qel fust livre a lui tanqil fust purge il fust enprisone ou noun nous ne savoms. Et pur ceo nous aviseroms; et suez ceo qe vous verrez qe soit affaire, et gattes voz jours et as utaves de Seint Michel.—Et Johan, de grace, est par maynprise; et adonques il navoit pas uncore acerte Court pluis avant de sa purgacion.—*Thorpe*. Il ny ad nul areste forsqe la suyte le Roi par quei lutlagerie ne serra pas reverse. Et jeo die qil est avantage le Roi qil voet reverser; qar esteant lutlagerie en sa force le Roi navera de ses terres forsqe lan et le wast, et le chief seigneur avera leschete de sa terre; et sil fust reverse, les terres

## No. 48.

A.D. 1311. reversed, the lands would remain in the King's hand until he was duly purged. And I say that he would be received to every ancestral action, notwithstanding he was in the Bishop's prison, for he would be vouched and would answer, and his heir would have a Mort d'Ancestor on his seisin.—*Stouford*. As to your statement that it would be to the King's advantage, it is not so; for I say that if the King be seised of the lands of a clerk convict, although he be first convicted of felony, the lord shall not afterwards deraign the lands out of the King's hand by way of escheat, because of the first cause of seizing.—And afterwards a writ came on the matter to proceed to the annulling of the outlawry.—And *Stouford* would at last have alleged that he was at large when the outlawry was pronounced against him, and was not admitted thereto, because the Ordinary testified that he was in prison until his purgation. And then the outlawry was reversed, without their being otherwise apprised of his purgation; but he remained until the Court should be more fully certified of his purgation.—And afterwards the Court said how formerly there was a dispute in the hall there, and a brawl, and amongst others this John de Manby was taken, and he put himself, &c.; and it was found that he drew his sword in aid of the others who did the wrong, but that he did not strike; wherefore, as to him, for that matter it was proper that he should remain also. And note that John Burgeys was struck in that brawl, and afterwards died thereof. May God assoil him. Amen.

Quare  
impedit.

(48.) § In a *Quare impedit*, which the King brought against Ralph Boteler, the King made title that the advowson was appendant to the manor of T., of which manor J. Boteler died the King's tenant, and

## No. 48.

demoront en la mayn le Roi tanqil fust duement A.D. 1341. purge. Et jeo die qil serreit resceu a chescune accion ancestrel, *non obstante* qil fust en prisone Levesqe, qar il serreit vouche et respondra, et son heir avereit de sa seisine mortdancestre.—*Stouf.* Quant a ceo qe vous dites qil serreit en avantage le Roi, il nest pas issi; qar jeo die qe le Roi soit seisi de terre un clerc atteint, tout primes soit il felon atteinte, apres le seigneur ne d-r-nera pas la terre hors de la mayn le Roi par voie deschete, pur ceo qe la premiere cause a seisir.—Et puis bref vient sur la matere daler avant a la nyentisement del utlagerie.—Et *Stouf.* voleit a drein aver alege qil fust a large quant lutlagerie fust pronuncie en lui, et nest pas resceu, pur ceo qe ordener tesmoigna qil fust en prisone tanqe sa purgacion. Et puis lutlagerie, sanz estre autrement apri de sa purgacion, fust reverse; mes il demora tanqe Court soit pluis plenerment acerte de sa purgacion.—Et puis Court dit coment autrefoitz y avoit debat en la sale illoeq-s, et kontek, et entre autres cestui Johan de Manby pris, et se mist; et trove fust qil treit son espee en eide des autres qe firent le male, mes il ne ferit pas; par quei, pur celui, et pur cele chose il covient qil demoerge auxi. *Et nota* qe Johan Burgeys en cel kontek fust feru, et puis mort de cel kontek. Qe dieu lassoille. *Amen.*

(48.)<sup>1</sup> § En un *Quare impedit*, qe le Roy porta vers Rauffe Boteler, ou le Roy fist title qe lavowere fuit appendant al manere de T., de quel manere J. Boteler

*Quare impedit.*  
[Fitz.  
*Estoppel*,  
237.]

<sup>1</sup> From L. alone. This may be a second report of No. 19.



Nos. 49, 50.

A.D. 1341. that by reason of the non-age of his heir the King seized.—To this it was said that J. Boteler had nothing except by sufferance of Ralph's father.—*Thorpe*. J. was impleaded in respect of the moiety of a virgate of land which was parcel of the manor, and vouched, and the vouchee warranted; therefore you shall not be admitted to say that J. had nothing except by sufferance.—*Pole*. That moiety was not parcel of the manor.—And the other side said the contrary.—And by the inquest taken at *Nisi prius* it was found that the land was not parcel of the manor.—*Thorpe*. The inquest has been taken from the neighbourhood of the manor, whereas it ought to have been taken from the neighbourhood of the parcel.—*HILLARY*. If non-tenure be alleged of parcel of a manor, the inquest shall be taken from the neighbourhood of the manor; so here.—*Thorpe*. If the parcel were in another county, it would be necessary that the inquest should be taken from that neighbourhood, &c.

Scire  
facias.

(49.) § A *Scire facias* against a parson in respect of arrears of an annuity recovered against a predecessor. The Sheriff returned that the defendant was a benefited clerk, and had no lay fee wherein he could be warned. And execution was awarded, &c.

Waste.

(50.) § On a writ of Waste, which T. Hastings brought against William and M. his wife, at the return of the Grand Distress, the Sheriff was commanded, by reason of default, to enquire of the waste. And the waste was found. Thereupon the wife prayed to be admitted. The admission was counterpleaded, and on the counterplea the parties were adjourned to the Quinzaine of Trinity. Afterwards, on the first day of the Quinzaine, because the wife did not come, judgment was given for the plaintiff, &c.

## Nos. 49, 50.

morut le tenant le Roy, et par nounage de soun heir A.D. 1341. le Roy seisi.—A qi fut dit qe J. Boteler navoit rien fors de la seoffraunce le pere Rauffe.—*Thorpe*. J. fuit enplede de la moyte de un verge de terre qe fuit parcel du maner, et voucha, qe garrantist; par quei a dire qe J. navoit rien fors par seoffraunce ne serrez resceu.—*Pole*. Cele moyte ne fut pas parcel de maner.—*Et alii e contra*.—Et lenqueste prise par le *Nisi prius* trove fuit nyent parcel.—*Thorpe*. Lenquest est prist de visne de manere, la ou ele deveroit estre pris de visne de cel parcel.—*HILL*. Si noun tenue soit allege de parcel de maner, lenquest serra pris de visne du maner; *sic hic*.—*Thorpe*. Si le parcel fut en autre counte, il covendreit qe lenqueste fut prise de cel visne, &c.

(49.) <sup>1</sup> § Un *Scire facias* vers un persone darrerages Scire  
de un annuite recovere vers un predeceusour. Le <sup>facias.</sup>  
Vicounte retourna qil fuit clerk benefice, et navoit <sup>[Fitz.</sup>  
nul lay fee ou il put estre garni. Et execucion fuit <sup>Scire</sup>  
<sup>facias,</sup>  
agarde, &c. <sup>15.]</sup>

(50.) <sup>2</sup> § En un bref de Wast, qe T. Hastanges Wast.  
porta vers William et M. sa feme, a la grant destresse <sup>[Fitz.</sup>  
retourne, par defaute fuit maunde al Vicounte denquere <sup>Jugement,</sup>  
de wast. Et trove fut le wast. Sur ceo la feme <sup>132.]</sup>  
pria destre resceu. La resceite fut contreplede, et  
sour le countreplee l-s parties ajournez tant qe a la  
xv. de la Trinite. Puis, al primer jour de la xv., pur  
ceo qe la feme ne vynt pas, jugement fuit rendu  
pur le pleyntif, &c.

<sup>1</sup> From L. alone.

<sup>2</sup> From L. alone. This may, per-

haps, be a second report of No. 26  
in Easter Term next preceding.

Nos. 51, 52.

A.D. 1341. (51.) § On a writ of Right *de rationabilibus divisis* which an Abbot brought against Alice, Countess of Lincoln, she prayed aid of Roger Lestrangle, who joined in aid, and the two joined the mise. Afterwards the parties were called, and the prayee in aid made default, and the tenant came on the following day. If the tenant make default, *quære* whether the judgment shall be final against the prayee in aid, &c.

Entry. (52.) § On a writ of Entry against one who was under age, he said that the tenements were in the

## Nos. 51, 52.

(51.) <sup>1</sup> § En un bref de droit de renables dyvises A.D. 1341.  
 qun Abbe porta vers Alice, Countesse de Nichole, ele Dreit.  
 pria eide Roger Lestrangle, qe se joynt, et les deux  
 joygnerent le myes. Pus les parties furent demandez,  
 et le prie en eide fist defaute, et le tenant vynt al  
 prochein jour. Si le tenant face defaute, *quære* si le  
 jugement serra fynal en contre le prie en eide, &c.

(52.) <sup>2</sup> § En un bref dentre vers un<sup>3</sup> deinz age, il Entre.  
 dit qe les tenementz sont en la mayn le Roy par

<sup>1</sup> From L. alone. As to this case, of which there are several notices in the Y. B., see above, p. 188, note <sup>1</sup>.

<sup>2</sup> From L. alone. The record of this case seems to be *Placita de Banco*, Trinity, 15 Edw. III., B<sup>o</sup>. 96, d. It there appears that the action was brought by John son of Thomas de Brykenille against William son of William de Putton in respect of a messuage and lands in Bentley (Hants), into which William, as alleged, had not entry, but "post dimissionem quam" "Willelmus de Brykenille frater" "prædicti Johannis, cujus heres" "ipse est, dum idem Willelmus" "de Brykenille infra ætatem fuit," "inde fecit Johanni de Scoteneye" "et Ricardo de Hardyngtone capellano." William appeared by his guardian. "Et super hoc" "venit quidam Johannes de Scoteneye, et profert hic literas domini Regis nunc patentes que testantur quod idem dominus Rex concessit ipsi Johanni custodiam unius mesuagii et unius carucatæ terræ cum pertinentiis in Benetlegh [and other places] que sunt eadem tenementa que prædictus Johannes per breve suum prædictum petit

"versus prædictum Willelmum" "filium Willelmi et quæ Thomas" "Payn et Alicia uxor ejus jam" "defuncta tenuerunt ad terminum" "vitæ ipsius Aliciæ de hereditate" "ipsius Willelmi filii Willelmi per" "nomen Willelmi de Puttone" "fratris et heredis Johannis de" "Puttone infra ætatem et in" "custodia Regis existentis, et" "quæ occasione mortis præfatæ" "Alicie et ratione minoris ætatis" "prædicti heredis in manu Regis" "existunt," at a rent payable at" "the Exchequer as described. To this John son of Thomas replied that the tenements in demand were not the same as those contained in the letters patent, and tendered an averment to that effect. There was an adjournment. "Et interim" "prædictus Johannes filius Thomæ" "sequatur versus dominum Regem" "ai, &c." The words "Loquendum cum Rege" here appear in the margin. After further adjournments William pleaded a release of all right made by John "pendente placito." John acknowledged the deed, and judgment was given that he should take nothing by his writ.

<sup>3</sup> L., un femme.

## Nos. 53, 54.

A.D. 1341. King's hand by reason of his non-age, and prayed his age. And another person showed that the King had granted to him the wardship, and that the tenements were in this way in the King's hand.—*Gayneford*. The infant shall not delay our action unless he show his estate by succession; and we tell you that he is a purchaser (and *Gayneford* showed how).—HILLARY. Be he in as heir or as purchaser, so long as the tenements are in the King's hand we will not hear the plea without the King's special command; therefore sue to the King, &c.

Scire  
facias.

(53.) § In the King's Bench, in a *Scire facias* on a fine, non-tenure was alleged.—This was not allowed.—The defendant then said that the tenements were in a different vill and place.—This was not allowed.—Afterwards the defendant said that before the fine, at the time of the fine, and since the fine, one T., whose estate he had, was seised, without this that the parties to the fine had anything thereof at the time of the fine, without showing how he had estate.—The other tendered the averment that he who rendered was seised, &c.

Scire  
facias.

(54.) § On a *Scire facias* against three persons on a recognisance made by the three, *unus quisque in solido*, the Sheriff returned that Giles de Badlesmere, one of the recognisors, was dead, and that the other two had nothing wherein to be warned. Therefore

Nos. 53, 54.

soun nonage, et pria son age. Et un autre moustra A.D. 1341.  
 qe le Roy luy avoit grante la garde, issint les tene-  
 mentz en la mayn le Roy.—*Gayn.* Lenfant ne targera  
 pas nostre accion sil ne moustre soun estat par succes-  
 sion; et vous dioma qe est purchaceour; et moustra  
 coment.—*HILL.* Soit il einz com heir ou com pur-  
 chaceour, esteantz les tenementz en la mayn le Roi,  
 nous entendrons pas le plee sanz especial maundement  
 le Roy; *ideo* suiez al Roy, &c.

(53.)<sup>1</sup> § En Bank le Roy, en un *Scire facias* hors *Scire*  
 dune fyn, nontenue fuit allege.—*Non allocatur.*—Il *facias.*  
 dit qe lez tenementz furent en autre vile et lewe.—  
*Non allocatur.*—Pus il dit qe devant la fyn, en temps  
 de la fyn, et pus la fyn, un T., qi estat il ad, fust  
 seisi, sanz ceo qe le partiez al fyn rien en avoient al  
 temps del fyn, sanz moustrer coment il avoit estat.—  
 Lautre tendi daverer qe celuy qe rendi fuit seisi, &c.

(54.)<sup>2</sup> § En un *Scire facias* vers troies dune reco- *Scire*  
 nissance fait par les troies, *unus quisque in solido*, le *facias.*  
 Vicounte retourna qe Giles de Batelesmere, un des  
 reconisours, fuit mort, et qe les aultrez ij. navoient

<sup>1</sup> From L. alone.

<sup>2</sup> From L. alone. The record of this case seems to be among the *Placita coram Rege*, Trin., 15 Edw. III., R<sup>o</sup>. 149. It commences with the enrolment of a *Mittimus*, with which was sent from the Chancery the tenor "cujusdam recognitionis, quam Egidius de Badlesmere fecit Gilberto de Umframvyle, Comiti de Anegos, in Cancellaria" for 1,100 marks. A *Scire facias* then

issued to warn Giles, to which the Sheriff returned that Giles was dead. Thereupon a *Scire facias* issued to warn William de Roos de Hamelak and Margery his wife (sister and one of the heirs of Giles), John de Veer Earl of Oxford and Matilda his wife (sister and another of the heirs of Giles), William de Bohun Earl of Northampton and Elizabeth his wife (sister and another of the heirs of Giles), John de Tiptoft and Mar-

## No. 55.

A.D. 1341. the heirs and the ter-tenants of Giles were warned; and they came, and said that one of the two recognisors had heirs who were ter-tenants, and mentioned their names, and therefore (said they) we pray that they be warned.—*Blaik*. The recognisance is by each one for the whole, in which case our suit is given severally at our pleasure.—*Thorpe*. In a case in which your suit is commenced against one J. severally, you can so continue it, but that is in lieu of divers *Præcipes*, because the form of a *Scire facias* is different from that of a writ having divers *Præcipes*. In this case you have commenced your suit against all in common; wherefore, &c.—*Blaik*. Although he sued at first to warn all by a *Scire facias*, that was in lieu of divers *Præcipes*—*Blaik* meaning to say that the form of a *Scire facias* is different from that of a writ by divers *Præcipes*, so that he can afterwards choose his suit against whom he will, notwithstanding that the first writ be taken against the whole.

*Scire  
facias.*

(55.) A *Scire facias* on a Fine by which certain tenements were rendered to Margaret for her life, and afterwards the remainder to Odo de Acton and to the heirs issuing from his body. John son of [Odo de] Acton brought the *Scire facias*, and demanded execution as issue in remainder.—*Pole*. You ought not to have execution, because your father, since the death of Margaret, was seised by virtue of the

garet his wife (sister and another of the heirs of Giles), and Elizabeth late wife of the same Giles, who were respectively ter-tenants, and held severally several parts of the lands which had been Giles's. The Sheriff returned that all had been warned. All but Elizabeth

late wife of Giles made default, and execution was awarded against them by default. Elizabeth late wife of Giles pleaded that she held in dower, which the plaintiff could not deny, and she went without day.

## No. 55.

rienx ou estre garnyz. Par quei les heirs et les terre<sup>s</sup> A.D. 1341. tenantz Gyles furent garnyz; qe vendrent, et disoient qe un de deux reconisours ad heirs terre<sup>s</sup> tenantz, et les noma, et prioms qil soient garnyz.—*Blaik*. La reconisance est chescqun pur tot, ou nostre suyte est done several a nostre volunte.—*Thorpe*. En cas qe vostre suyte est comence vers un J. severalment, vous le poiez continuer, mes ceo en lieu de divers *Præcipes*, qar le fourme de *Scire facias* si est autre qe divers *Præcipes*. Icy vous avez comence vostre suyte en comune; par quei, &c. — *Blaik*. Coment qil suyt primes de garnir touz par un *Scire facias*, ceo fuit en lieu de divers *Præcipes*, *quasi diceret* la fourme de *Scire facias* si est autre qe divers *Præcipes*, issint qil put chosiere sa suyte apres quel qil voudra, *non obstante* le primer bref consu vers touz, &c.

(55.) <sup>1</sup> § Un <sup>2</sup> *Scire facias* hors de un fyn par quel *Scire* certains tenementz furent renduz a Margarete <sup>3</sup> a sa <sup>facias.</sup> vie, et apres le remeindre a Eude <sup>4</sup> de Actone et as <sup>[Fitz. Barre, 255.]</sup> heirs de son corps issauntz. Johan fitz Dactone porta le *Scire facias*, et demanda execucion com issue en le remeindre.—*Pole*. Vous ne devez execucion aver, qar vostre pere, pus la mort Margarete, <sup>3</sup> fuit seisi par

<sup>1</sup> From L. alone. This appears to be another report of Y. B., H., 15 E. 3, No. 17, but is treated as an independent case in Fitzherbert's *Abridgment*.

<sup>2</sup> L., En un.

<sup>3</sup> L., A.

<sup>4</sup> L., Johan. For the names of the parties see the report of Hilary Term, and notes thereto.



## No. 55.

A.D. 1841. remainder.—*Thorpe*. His seisin ought not to oust us from execution, since we demand as heir in tail, as party to the purchase, and not as heir simple, because we cannot take title solely on that seisin which you allege without commencing with the remainder [given in the fine].—*Stouford*. But the estate which you demand was executed in the person of your father; wherefore, &c.—*Thorpe*. If the estate of the person herself to whom the tenements were rendered for term of life had never been executed, and our father had afterwards been seised by virtue of the fine, and had aliened, unless we could maintain this writ we should be without recovery, for an original writ could not serve us.—*Blaik*. Yes, it could; for you could have a writ of Formedon in the Descender, supposing the gift to have been made to your father, who was seised by execution, because that seisin, by virtue of the fine, ought to be considered as a gift.—And some said that he would have a Formedon in the Remainder, and would maintain the gift to have been made to the person who had a term for life by the fine without seisin.—*Blaik*. Even though you could have execution by the fine, still your right descends, since you have acknowledged that your father was seised.—*Thorpe*. That objection applies to the form of the writ, which you have accepted by a plea of non-tenure and by plea to the action, inasmuch as you said that the fine was once executed.—*Stouford*. That does not apply to the form, but is to change the matter of the writ and give another kind of action.—And afterwards they waived the exception, and alleged exchange made between the plaintiff's father [and the tenant], and that the plaintiff's father died seised of the lands taken in exchange, partly in demesne and partly in reversion, and that the plaintiff entered upon the

## No. 55.

le remeindre.—*Thorpe*. Sa seisine nous ne doit ouster A.D. 1341. de execucion, del heure qe nous demandoms com heir en la taille, com partie a purchas, et nyent com heir simple, qar de cele seisine quel vous allegez ne pooms que solement prendre title saunz comencer a remeindre, &c.—*Stouf*. Mes lestat qe vous demandez fut execute en la persone vostre pere; par quei, &c.—*Thorpe*. Si [lestat] le persone mesme a qui les tenementz furent renduz a terme de vie nust unqes este execute, et nostre pere apres ust este seisi par la fyn, et ust aliene, si nous ne pussoms mayntenir ceo bref nous sumes sanz recoverir, qar bref original ne nous pust servir.—*Blaik*. Si put; qar vous poez aver bref de fou:me de doun en le descender, supposant le doun estre fait a vostre pere, qe fut seisi par execucion, qar cele seisine, par la fyn, doit estre ajugge un doun.— Et asquns disoient qil averoit forme de doun en le remeindre, et mayntendra le doun estre fait a celuy qe avoit terme de vie par la fyn sanz seisine.—*Blaik*. Mesqe vous porrez aver execucion par la fyn, unqore vostre droit descend, de pus qe vous avez conu qe vostre pere fut seisi.—*Thorpe*. Cest al forme qe vous avez accepte par non tenue et par plee al accion, en tant com vous deistez qe la fyn fust un foith execute.—*Stouf*. Ceo nest pas a la fo:me, eynz est a changer le matere de bref et a doner aultre manere de accion.—Et pus il veyvrent l'exceptioun, et alleggerent eschange fait entre le pere de quex terres prises en eschange le pere le pleintif morut seisi, partie en demene et partie en reversion, et le pleintif entra en

## No. 55.

A.D. 1341. lands in demesne, and that the reversion descended to him, and that he thus agreed to the exchange, and is still seised of part. And they showed an indenture which testified the exchanges with warranty, and demanded judgment whether execution, &c.—*Thorpe*. The exchange with agreement is a matter by itself; and the warranty, with the allegation that assets descended to him, is another matter by itself; wherefore hold to one, &c.

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## No. 55.

les terres demene, et la reversion luy descendi, issint A.D. 1341. agreant les eschange, et unqore seisi de partie. Et moustra endenture qe testmoigna les eschanges ov garrantie, et demanda jugement si execucion, &c.—*Thorpe*. Les eschanges ove agreement et sunt un gros; et la garrantie, ove ceo qe assetz luy descendirent, sount un altre gros; par quei tenez a lun, &c.

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**MICHAELMAS TERM**  
**IN THE**  
**FIFTEENTH YEAR OF THE REIGN OF**  
**KING EDWARD THE THIRD**  
**AFTER THE CONQUEST.**

# MICHAELMAS TERM IN THE FIFTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

## No. 1.

A.D. 1341. (1.) § The Warden of the Hospital of St. James brought an assise of Novel Disseisin in respect of rent. The tenant pleaded *Hors de son fee*. The Abbot replied that it was within his fee. It was found by the Assise that it was within his fee, as the right of his Hospital, and that his predecessors from all time were seised, and that the predecessor of him who now brought the assise died seised, but that this plaintiff was never seised.—*Thorpe*. It is found that it is the right of our Hospital, and that we found the House seised, which is our seisin in law.—HILLARY. How shall you have an assise when you were never seised, any more than an heir would have one after the death of his ancestor?—*Thorpe*. There is a difference; for the ancestor is seised in his own right, but the Master of a Hospital, or an Abbot, or a Prior is seised in right of his House or Church, and that seisin is continued until the Head of the House is disseised.—HILLARY. Of whose seisin will you avow in this case? (as meaning to say of the seisin of the predecessor). But it has been seen that the heir has had an assise of common after the death of his ancestor, when he was not seised, and this was by reason of the seisin of the freehold to which the common was appendant; but that is not the case here.—*Thorpe*. It is not the same with rent

Assise of Novel disseisin.  
And note that no one shall maintain assise of Novel Disseisin unless it be that he have been sometime seised in fact, in manner as is alleged in this plea; but, if an assise of Novel Disseisin be brought against an Abbot or a Prior, and he die, and another is elected, the assise is still maintainable for his successor, notwithstanding that he was never seised in

DE TERMINO MICHAELIS ANNO REGNI REGIS  
EDWARDI TERTII A CONQUESTU QUINTO  
DECIMO.<sup>1</sup>

No. 1.

(1.)<sup>2</sup> § Le gardein del hospitale de Seint Jak porta assise de novele disseisine de rente. Le tenant pleda Hors de son fee. Il replia qe deinz son fee.<sup>3</sup> Trove fuit par assise qe cest deinz son fee, come le dreit de soun hospitale, et qe ses predecessours de tout temps furent seisis, et le predecessour cestui qore porté lassise morust seisi, mes cestui ne fuit unqes seisi qore se pleinte.—*Thorpe*. Trove est qe cest le dreit nostre hospital, et qe nous trovames la mesoun seisie, quele est nostre seisine en ley.—*HILL*. Coment averez vous assise ou vous fuistes unqes seisi, puis qe heir avereit apres la mort son auncestre?—*Thorpe*. Il ad diversite; qar launcestre est seisi en son dreit demene, mes mestre dun hospital, ou Abbe, ou Priour sont seisi en le dreit de lour mesoun ou leglise, et cele seisine est continue tanqe le sovereyn soit disseisi.—*HILL*. De qi seisine avoweres vous icy<sup>4</sup>? *quasi diceret* de la seisine le predecessour. Mes de comune homme ad vew qe leir ad ew assise apres la mort son auncestre,<sup>5</sup> ou il ne fust pas seisi, et ceo fuit par cause de la seisine de frank tenement a qi la comune fuit apendant; *non sic hic*.—*Thorpe*. Il nest pas de

A.D. 1341.  
Assisa  
Novæ Dis-  
seisinae.  
Et nota qe  
nul homme  
mayntien-  
dra assise  
de novel  
disseisine,  
sil ne soit  
qil soit  
ascun  
temps seisi  
en fait, en  
le manere  
come est  
allegge en  
cest plee;  
mes si une  
assise de  
novele dis-  
seisine soit  
porte vers  
un Abbe  
ou Priour,  
et il devye,  
et un altre  
est eslux,  
unqore  
lassise est  
maynten-  
able pur  
soun suc-  
cessour,  
nient con-  
tresteant  
qil ne fut  
unqes seisi

<sup>1</sup> The reports of this Term are from the Temple MS., the Lincoln's Inn MS., and the Additional MS. in the British Museum numbered 16,560.

<sup>2</sup> From T. and L. The part of

the marginal note after Disseisinae is in L. alone.

<sup>3</sup> This replication is not in L.

<sup>4</sup> icy is not in T.

<sup>5</sup> L., pere.



## No. 2.

A.D. 1341. as with demesne ; for in the case of rent, when any one recovers, he is, by the words of the judgment, without any other execution, seised thereof, on account of the right.—HILLARY. It is not so.—*Thorpe*. It is so ; for execution can not be made of the rent, but only a distress, and this is not the rent ; and it has been adjudged for law, in the circumstances in which we are, that the successor shall recover.—HILLARY. This I well know, that it was considered by the most learned men that he erred who gave the judgment ; and therefore there was suit to reverse the judgment, but he who gave the judgment caused the parties to come to terms.—See an assise of Easter Term in the third year, where seisin of rent was awarded,<sup>1</sup> &c.

Cosinage. (2.) § Cosinage on the seisin of Isabel. And the demandant made the resort from Isabel to her aunts, sisters of John the father of Isabel, and then made the descent.—*Blaik* said, for the tenant by warranty, who came at the *Sequatur suo periculo*, the writ being returned late.—His cousin on whose seisin, &c., was named Katherine ; judgment of the writ.—*R. Thorpe*. You shall not be admitted to that ; for this original writ was brought against yourself, although you are now tenant by your warranty by revoucher ; and you demanded view and then,

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<sup>1</sup> Y. B., Easter, 3 E. 3, No. 2, p. 11.

## No. 2.

rente come de demene; qar de rente,<sup>1</sup> quant homme recovere, par parole de jugement, sanz autre execucion, il est seisi pur le droit.—HILL. *Non est ita.*—Thorpe. Si est; qar execucion ne se poet faire de la rente, mes de distreindre, et ceo nest pas la rente; et il ad este ajuge ley, en le cas qe nous sumes, qe le successor recovera.—HILL. Ceo say jeo bien, qe fust avis<sup>2</sup> a les pluis sages qil erra qe rendi le jugement; et pur ceo fust suy de reverser le jugement, mes celui qe rendist le jugement fist les parties acorder.—*Vide un assise Paschæ tertio*, seisine de la rente agarde, &c.<sup>3</sup>

A.D. 1341.  
en propre  
persone,  
qar il fut  
seisi come  
de droit de  
sa esglise,  
sicome  
plus  
pleyne-  
ment apiert  
en cest  
plee, &c.  
[Fitz.  
Assise, 93;  
15 Li. Ass.  
10.]

(2.)<sup>4</sup> § Cosynage de la seisine Isabele. Et fist le resort de Isabele a ses aunes, soers Johan. pere Isabele, et puis la descente.—*Blaik* dit, pur tenant par sa garrantie, qe vient al *Sequatur suo periculo*, le bref retourne tarde:—Sa cosyne de qi seisine, &c., avoit a noun Kateryne; jugement du bref.—*R. Thorpe*. A ceo navendres pas; qar ceo bref original fust porte vers vous mesmes, coment qe vous soiez ore tenant par vostre garrantie par revoucher; et vous deman-

Cosynage.  
[Fitz.  
Estoppa.  
238.]

<sup>1</sup> The words de rente are not in L.

<sup>2</sup> L., mys.

<sup>3</sup> The last sentence is not in T.

<sup>4</sup> From T. and L. The record of this case is among the *Placita de Banco*, Mich., 25 Edw. III., R<sup>o</sup>. 127. It there appears that the action was brought by Richard de Sprotleford and Thomas son of Reginald Andreu. They demand "versus Alanum Yenge, capellanum, quem Walterus filius Johannis le Clerk de Trippelowe vocat ad warrantum, et qui ei warrantizat, unum mesuagium et quater viginti acras terræ cum

"pertinentiis in Trippelowe, de quibus Isabella quæ fuit uxor Johannis Sturel consanguinea prædictorum Ricardi et Thomæ, cujus heredes ipsi sunt, fait seisa in dominico suo ut de feodo die quo obiit." It was alleged in the count that "de ipsa Isabella, quia obiit sine herede de se, resortiebat feodum, &c., quibusdam Cæcilie et Margerie ut amitis et heredibus, &c., sororibus Johannis patris prædictæ Isabellæ. Et de prædicta Cæcilia descendit feodum partis suæ cuidam Thomæ ut filio et heredi, &c., et de ipso

## No. 3.

A.D. 1341. vouched, and so the writ was affirmed.—*W. Thorpe*. We are now tenant in another aspect, and we have the same answer as he whom we vouched would have.—*HILLARY*. I do not think so.—*Blak*. Whereas he makes his cousin to be John's daughter, we tell you that John had no daughter named Isabel.—*R. Thorpe*. This exception goes to the same intent as the other did, that is to say, that our cousin had a name other than Isabel, to which exception he shall not be admitted; and I say that the resort and descent are affirmed by the view and the voucher.—*Gayneford*. That can not be; for there was no count counted before now.—*BASSET*. It was your own folly that view was demanded before the count.—*W. Thorpe*. I do not deny that his cousin was named Isabel; but I say that she was not John's daughter; and that is sufficient for me, for perchance she was the daughter of another ancestor, and the law does not require that I should say whose daughter, but only that I should traverse what he has given me.—*R. Thorpe*. Certainly, it is not an issue in the plea at any time, even before view, without traversing by saying that she was called by a different name, or that she was the daughter of some one else, or that there was no such person; but you can not now plead any of these points.—*W. Thorpe*. She did not die seised; ready, &c.—And the other side said the contrary.

Account.  
Note.

(3.) § Note that on a writ of Account the defendant came by the *Capias*, and admitted the account in part, and denied the rest. And because account

"Thoma cuidam Ranulpho ut filio  
"et heredi, &c.," and from Ranulph to Richard the demandant as son and heir. "Et de prædicta  
"Margarita descendit feodam pro-

"partis sue cuidam Johanni ut  
"filio et heredi, &c., et de ipso  
"Johanne cuidam Reginaldo ut  
"filio et heredi, &c.," and from Reginald to Thomas the demandant

## No. 3.

dastes vewe et puis vouchastes, et issi le bref afferme. A.D. 1341.

—*W. Thorpe*. Nous sumes ore tenant a autre regard, et nous avoms mesme la respouns qe celui qe nous vouchoms avereit.—*HILL*. Ceo ne croy jeo pas.—

*Blaik*. La ou il fait sa cosyne fille a Johan, nous vous dioms qe Johan navoit nule fille Isabele.—*R. Thorpe*. Cest excepcion va a mesme lentente qe lautre fist, cest a dire, qe nostre cosyne avoit autre noun qe Isabele, a quei il ne serra pas resceu; et jeo dy' qe resort et descent est afferme par la vewe et le vouchier.

—*Gaym*. Ceo ne poet estre; qar il ny avoit nul cont counte avant ore.—*BAS*. Ceo fust vostre folie qe vewe fust demande avant le conte.—*W. Thorpe*. Jeo

ne dedy pas qe son cosyne avoit a noun Isabele; mes jeo dy qele ne fust pas fille Johan; et ceo moi suffit, qar par cas ele fust fille dun autre auncestre, et la ley ne voet nyent qe jeo die quei fille, mes traverser ceo qil mad done.—*R. Thorpe*. Certes, ceo nest pas issu de plee a nul temps, mesqe ceo fust avant vewe, sanz<sup>1</sup> traverser qele fust nome par autre noun, ou qele fust autri fille, ou qil y avoit nul tiel; mes vous ne poez a ore dire nul de ses pointz.—

*W. Thorpe*. Ele ne morust pas seisi; prest, &c.—*Et alii e contra*.

(3.)<sup>2</sup> § *Nota* qen bref dacompt le defendant vient par le *Capias*, et conust lacompte en partie, et le remenant il dedit. Et pur ceo qe lacompt ne poet

De Com-  
poto.  
Nota.  
[Fitz.  
Main-  
prise, 19.]

as son and heir. "Et Alanus per  
"attornatum suum venit. Et alias  
"vocat ad warrantum Walterum  
"le Clerke de Trippelowe qui  
"modo venit per summonitionem,  
"&c. Et gratis ei warrantizat, &c.  
"Et defendit jus suum quando,  
"&c. Et bene defendit quod præ-  
"dicta Isabella consanguinea, &c.,

"non fuit seisisa de prædictis tene-  
"mentis in dominico suo ut de  
"feodo die quo obiit, sicut prædicti  
"Ricardus et Thomas per breve  
"suum supponunt. Et de hoc, &c."  
Issue was joined thereon.

<sup>1</sup> T., a.

<sup>2</sup> From T. and L.

## No. 4.

A.D. 1341. can not be taken by parcels, and he had not mainprise, he remained in custody, and the plaintiff went with his day. And three days afterwards the defendant came and proffered mainprise.—HILLARY. The plaintiff has gone out of Court with his day, and the account is admitted in part, in which case the defendant is not allowed to go out on mainprise.—*Blaik*. On an Exigent the defendant is admitted to surrender, and be out on mainprise, although the plaintiff be out of Court; and, as to that for which the account is admitted in part, we are ready to account for that if the Court will allow it; and even though he have accounted for more, and that falsely, he shall not be in custody.—And afterwards he was released on mainprise.

Crown. (4.) § In the King's Bench one formed an Appeal and was non-suited, and was taken, and made his fine for the imprisonment. And afterwards the appellee was acquitted. And enquiry was made of abettors and of the damages, and whether the appellor was sufficient. And command was given to take the appellor for his false appeal. And he came of his own accord into Court and proffered himself, and prayed that he might make fine for the imprisonment.—SCOT. He shall not do this until the party be satisfied as to his damages.—*R. Thorpe*. The party did not sue to have damages; and also the appellor is not convicted as to the party, except by inquest of office.—And afterwards he made his fine, notwithstanding that the party was not satisfied as to his damages.—*Quere*.

## No. 4.

estre pris par parcelles, et il navoit pas maynprise, A.D. 1341. il demora en garde, et le pleintif ala ove son jour. Et trois jours apres le defendant vient et profry maynprise.—HILL. Le pleintif est ale hors de Court ove son jour, et lacompt est conu en partie, en quel cas homme ne seoffre pas le defendant aler hors par maynprise.—*Blaik*. En exigende homme resceit le defendant soi rendre, et estre par maynprise, tout soit le pleintif hors de Court; et de ceo qe lacompt est conu en partie, nous sumes<sup>1</sup> prest dacompter de cel si Court le voet souffrir; et tout eit il acompte de pluis et fausement, il ne serra pas<sup>2</sup> en garde.—Et puis il est lesse par meynprise.

(4.) <sup>3</sup> § En Bank le Roi un fourma une apele et DeCorona. fust nounsuy, et fut prise,<sup>4</sup> et fist sa fyne pur [Fitz. lenprisonement. Et puis lapele fust acquite. Et en- Fynes, 49.] quis fust des abettours et des damages, et si<sup>5</sup> lappelour fuit<sup>6</sup> sufficeant. Et comande fust de prendre lappelour pur son faux apele. Et il<sup>7</sup> vient de gree en Court et se profry, et pria qil put faire fyne pur lenprisonement.—SCOT. Ceo ne fra il pas tanqe partie soit servy de ses damages.—*R. Thorpe*. Partie ne suyst pas daver damages; et auxi il nest pas atteint, quant a la partie, forsque par enquest doffice.—Et puis il fist sa fyne, *non obstante* qe la partie ne fuit<sup>8</sup> pas servi.—*Quere*.

<sup>1</sup> T., Jeo au, instead of nous sumes.

<sup>2</sup> L., pas eide.

<sup>3</sup> From T. and L.

<sup>4</sup> The words et fut prise are not in T.

<sup>5</sup> si is not in T.

<sup>6</sup> T., trove.

<sup>7</sup> T., issi.

<sup>8</sup> T., nest, instead of ne fuit.

## No. 5.

A.D. 1341. (5.) § On a *Præcipe quod reddat* the tenant made default. The *Cape* issued. When the *Cape* was returned, the tenant caused himself to be essoined as being on the King's service, and had a day. On that day the tenant came and waged his law as to non-summons, and that he did not cause himself to be essoined as being on the King's service. The demandant refused the averment, and abode judgment, inasmuch as the tenant did not bring his warrant for the essoin, and

*Præcipe  
quod  
reddat,  
where  
Error was  
sued.*

## No. 5.

(5.)<sup>1</sup> § En un *Præcipe quod reddat* le tenant fist A.D. 1341.  
 defaute. *Cape*<sup>2</sup> issit. Al *Cape* retourne, le tenant se  
 fist essoner des services le Roi, et avoit jour, a quel  
 jour<sup>3</sup> le tenant vient et gagea sa ley de nounsomons,  
 et qil ne se fist pas essoner<sup>4</sup> de service le Roi. Le  
 demandant refusa laverement, et demora en jugement,<sup>5</sup>  
 desicome il ne porta pas son garrant del essone, et

*Præcipe  
 quod  
 reddat, ou  
 erreur  
 fust siwy.*

<sup>1</sup> From T. and L. The record of the proceedings in Error is among the *Placita Coram Rege*, Mich., 15 Edw. III., R<sup>e</sup>. 20. It there appears that the action was brought in the first instance in the Court of Common Pleas by Elena, late wife of Adam de Frekilton, against John son of Robert de Frekilton, in respect of lards in Freckleton (Lanc.). John made default after summons, and therefore his lands were to be taken into the King's hand by the Grand *Cape*, and John was to be summoned again. The Sheriff thereupon testified the taking and the summons. "Et quidam Ranulphus de Ry-myngton tunc fecit essoniari prædictum Johannem de servitio domini Regia." A day was then given, and both parties appeared, "et prædicta Elena petit quod prædictus Johannes ostendat warrantum suum de servitio domini Regis prædicto, &c." John said he had never been summoned, and never caused himself to be essoined *de servitio*, &c., and knew nothing about the essoin, "et hoc paratus est defendere per legem vel alio modo qualitercumque Curia considerabit, &c." Elena prayed judgment and seisin because John, having a day by essoin on the King's

service, did not show the warrant. John prayed judgment because Elena refused his tender of wager of law. "Et, quia prædicta Elena, quæsita per Curiam si legem prædictam admittere velit, legem illam omnino recusat, consideratum est quod prædicta Elena nihil capiat, &c." In the King's Bench Elena assigned error, saying that judgment ought to have been given for her "ex quo prædictus Johannes filius Roberti non habuit warrantum suum de essonio prædicto, nec aliquem diem habuit seu habere potuit ad aliquam defaultam sanandum seu alicui defaultæ respondendum." John said "non est erratum," repeating that the essoin was cast by Ranulph without his knowledge, with the object of causing him to lose his land, and that, when Elena would not accept his wager of law, the Justices rightly gave judgment for him. There were several adjournments, but no decision appears on this roll.

<sup>2</sup> L., *le Capias*.

<sup>3</sup> The words a quel jour are not in T.

<sup>4</sup> L., *fuit essone*, instead of *se fist pas essoner*.

<sup>5</sup> The words *en jugement* are not in L.



## No. 6.

A.D. 1341. prayed seisin. And because the demandant refused the wager of law, it was adjudged that she should take nothing.—And on this Error was assigned in the King's Bench, in that the tenant had a day by essoin, and did not warrant it; and if the essoin had not been cast, he would then have lost the land, and in that the Justices did not award seisin of the land they erred.—*Thorpe*. If he had been essoined at first as being on the King's service, and had made default afterwards, on his default the *Cape* would have issued; and on the return of the *Cape* the tenant would have been admitted to defeat the essoin and the summons by his wager of law; for the same reason in the other case.—BAUKWELL. The cases are not alike; for then he would have a day by the summons, in which case the wager of law would naturally lie. Even when one has a day by essoin as being in the King's service and comes, he must be warranted, or otherwise the land is lost.

Note of  
aid-prayer  
of his wife  
granted to  
her hus-  
band; and  
she was  
summoned.

(6.) § Note that in a Replevin the husband prayed aid of his wife, and *Herlaston, the Clerk*, asked whether the woman should be summoned, or the husband should be told to produce his wife, because both processes have been used; and it is right that she should be summoned, because otherwise she will not have an essoin, and the law wills that she may have one.—HILLARY. True; let her be summoned.

## No. 6.

pria seisine. Et pur ceo qil refusa la ley, agarde fust A.D. 1341. qil ne prist rien.—Et de ceo erreur est assigne en Bank le Roi, de tant qil avoit jour par essone et nel garrantist pas; et si lessone nust este jettu,<sup>1</sup> il ust adonques perdu terre, et de ceo qil agarderent pas seisine de terre si errerent ils.—*Thorpe*. Sil ust este essone primes de service le Roi, et ust fait defaute apres, par sa defaute *Cape* ust issu; et al *Cape* retourne le tenant ust este resceu davoit defait lessone et la somons par sa ley; pur mesmes la resoun en lautre cas.—*BAUK*. *Non est simile*; qar la avereit il jour par la somons, en quel cas la ley naturelment girreit. Mesme quant homme ad jour par essone des services le Roi et il vyngne, il covient<sup>2</sup> qil soit garranty, ou autrement la terre est perdu.

(6.)<sup>3</sup> § *Nota* qen un *Replegiari* le baroun pria eide de sa femme, et *Herleston, Clerk*, demanda la quele la femme serreit somons, ou qe dit serreit al baroun qil ust sa femme, qar homme ad use lun proces et lautre; et il est resoun qele soit somons, qar autrement navera ele pas essone, et ceo voet la ley qele eit.—*HILL*. Cest verite; soit somons.

Nota, de  
eyde prier  
de sa  
femme  
grante, et  
el est  
somons.  
[Fitz.  
Proses,  
173.]

<sup>1</sup> L., resceu.

<sup>2</sup> The words il covient are not in L.

<sup>3</sup> From T. and L. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 22, d. It there appears that the action was brought by John de Gustene against Nicholas de Sandwich. The plaintiff alleged that 150 sheep had been taken. Nicholas avowed as to 86 sheep, because John and Christina his wife, as in right of Christina, held laud of

Nicholas by fealty and the service of 8s. 8d. per annum, and the fealty and rent were in arrear. As to the rest of the sheep, Nicholas traversed the taking, and issue was joined thereon. As to the avowry, John said Nicholas took "extra feodum suum;" and Nicholas tendered the averment that he took within his fee. "Quam quidem verificationem prædictus Johannes dicit se expectare non posse sine prædicta Christina uxore suæ. Et petit auxilium de ipsa Chris-

## No. 7.

A.D. 1341. (7.) § Contempt for the King against an alien Prior,  
 Contempt against a Prior  
 dativo. for that he did not admit a man to a corody in his  
 Priory at the King's command, as others had been  
 admitted at the command of the King and his pro-  
 genitors in the same Priory, and because no writ that  
 came to him was returned.—*R. Thorpe*. As to the

“ tina, &c. Ideo ipsa summonea-  
 “ tur, quod sit hic, &c.” Christina  
 did not appear. “ Ideo prædictus  
 “ Johannes respondeat sine, &c.”

The *Venire* was awarded. John  
 failed to appear. Judgment was  
 given for Nicholas, with *Retura*.

## No. 7.

(7.)<sup>1</sup> § Contempt pur le Roi vers un Prior aliene, A.D. 1341.  
 de ceo qil resceust pas un homme a un corodie en sa Contempt  
 Priorie al mandement le Roi, come autres furent resceu vers un  
 a! mandement de lui et ses progenitours en inesame la Priour  
 Priorie, ne nul bref retourna qe lui vient.—*R. Thorpe.* datif.

<sup>1</sup> From T. and L. The record of this case appears among the *Placita Coram Rege*, Mich., 15 Edw. III., Rex, R<sup>o</sup>. 21. It there appears that the Prior of Hayling was attached because the King, wishing to provide for William de Husseborne, requested the Prior to receive him into the House, and to give him such sustenance, for life, as Philip de Candevere, deceased, had had at the request (*rogatum*) of Edward II. The Prior did nothing, and assigned no reason, and failed to appear *Coram Rege*, as commanded. The first writ was alleged to have been delivered to the Prior in the presence of persons named, as well as two subsequent writs to the same effect. The Prior at length "tanquam Prior dativus" et amotivus ad voluntatem Abbatis de Gymmyng, ut asserit," comes and says there was no contempt, because no such writ as alleged was delivered to him, and further, that whereas the King supposes him to be "Priorem perpetuum domus prædictæ," he is in fact "Prior dativus et amotivus ad voluntatem prædicti Abbatis, cuius procurator ipse est, nec alius quis habetur conventus aut sigillum commune apud Haillyng, nec ipse potest placitare vel placitari absque prædicto Abbate, &c., nec domum prædictam aliquo qualiter onerare, et hoc paratus est verificare, prout Curia, &c.

"Unde non intendit quod breve prædictum versus ipsum jaceat aut manuteneri potest pro domino Rege; unde petit iudicium." To this John de Lincoln, qui sequitur pro domino Rege, dicit quod l'prioratus de Haillyng est ex fundatione progenitorum domini Regis et per dominum Willelmum dudum Conquestorem Angliæ fundatus per nomen Prioratus, prædictusque Prior per Episcopum Wyntoniensem, loci Diocesanum, tanquam Prior perpetuus institutus, ratione ecclesiæ de Haillyng, quam tenet in proprios usus, et aliorum spiritualium quæ tenet in Diocesi prædicta, et ipse temporalia Prioratus prædicti, nuper in manu domini Regis certis de causis seisis, extra manum ejusdem domini Regis habenda, tanquam Prior perpetuus, assecutus est. Et dominus Rex ac progenitores sui de hujusmodi proficuo in Prioratu prædicto pro servientibus suis percipiendo, a tempore quo non extat memoria, semper hactenus seisisi fuerunt, quam quidem seisinam sive possessionem ipsius domini Regis aut progenitorum suorum prædictorum prædictus Prior non dedit, unde petit iudicium pro domino Rege, &c." The Prior repeated that he was not "perpetuus," but "dativus et amotivus." . . . "Et quod locus unde nominatur Prior non fuit

## No. 7.

A.D. 1341. contempt, no writ came to us; ready, &c. And as to the action, we tell you that we are a Prior dative, and removable at the will of the Abbot of Jumièges, our Head; judgment of the writ.—*W. Thorpe*. You see clearly how he has traversed the contempt, which is parcel of the King's action, and thus the writ is

“ fundatus per nomen Prioratus,  
 “ quia dicit quod prædictus domi-  
 “ nus Willelmus quondam Rex  
 “ Angliæ, progenitor domini Regis  
 “ nunc, concessit Sancto Petro  
 “ Gemmeticensi ecclesiam de Wyn-  
 “ terburnestoke et ecclesiam de  
 “ Cnytone sub hiis verbis ‘ W. Rex  
 “ Anglorum O. Episcopo Seres-  
 “ beris et G. Episcopo, et E. Vice-  
 “ comiti W., et W. Hosatis, et  
 “ omnibus teginis suis Francis et  
 “ Anglis salutem. Sciat is me con-  
 “ cessisse Sancto Petro Gemme-  
 “ ticensi ecclesiam de Wynterbur-  
 “ nestoke et ecclesiam de Cnytone  
 “ pro remedio animæ meæ meæque  
 “ conjugis Mathildis, cum omnibus  
 “ suis consuetudinibus sicut eas me-  
 “ lius tenuit Odo Capellanus et præ-  
 “ decessor ejus in diebus Regis Ed-  
 “ wardi, et, si quid inde subtrac-  
 “ tum est, restituatur.’ Dicit etiam  
 “ quod dominus H. quondam Rex  
 “ Angliæ, progenitor domini Regis  
 “ nunc, per chartam suam concessit  
 “ Sancto Petro Jumeticensi Haryn-  
 “ geyam et omnia quæ ad illa per-  
 “ tinent cum saca, &c.” . . . .  
 and that the aforesaid King H. also  
 granted and confirmed “ecclesiæ  
 “ beatæ Mariæ et Sancti Petri de  
 “ Gemmetico et monachis ibidem  
 “ Deo servientibus omnes eleemo-  
 “ synas quæ eis rationabiliter datæ  
 “ sunt in ecclesiis, et terris, et deci-  
 “ mis, et in omnibus aliis rebus,

“ scilicet ex dono Regis Willelmi in  
 “ Anglia majorem partem insulæ  
 “ Harengæ cum ecclesia, et deci-  
 “ mas totius insulæ exceptis decimis  
 “ leguminis et avenæ in terra Epi-  
 “ scopi Wyntoniensis,” with sac,  
 soc, &c., as well as other lands,  
 &c., at Lengham, at Winterbourne  
 Stoke (with “v. hospites”), and at  
 Chewton (with “xxij. hospites”),  
 and six chapels named [asin 6 Dugd.  
 Mon. Angl., 1087]. (*Profert* was  
 here made of a charter of 11 Ed-  
 ward II. confirming all this.) “ Et  
 “ dicit quod locus qui in charta præ-  
 “ dicta domini Henrici Regis anno-  
 “ tatur Harengeya modo vulgariter  
 “ nominatur Haillyng. Et quo ad  
 “ hoc quod Dominus Rex supponit  
 “ ipsum Priorem per Episcopum  
 “ Wyntoniensem loci Diocesa-  
 “ num fore institutum dicit quod  
 “ ipse vel aliquis prædecessorum  
 “ suorum nunquam per aliquem  
 “ Episcopum Wyntoniensem insti-  
 “ tuti fuerunt . . . et quo ad  
 “ hoc quod temporalia de Hail-  
 “ lyng, nuper in manum domini  
 “ Regis seisita, extra manum ipsius  
 “ domini Regis habenda per nomen  
 “ Prioris assecutus [est] dicit, ut  
 “ prius, quod ipse est procurator  
 “ ipsius Abbatis,” and so on as be-  
 fore, and although he did have livery  
 as alleged, it is not thereby proved  
 that he is “Prior perpetuus” . . .  
 “ Et ex quo locus de Haillyng non

## No. 7.

Quant al contempt, nul bref nous vient; prest, &c. A.D. 1841.  
 Et quant al accion, vous dioms qe nous sumes Priour  
 datif, et remuable a la volunte Labbe de G., nostre  
 sovereign; jugement du bref.—*W. Thorpe*. Vous veez  
 bien coment il ad traverse le contempt, qest parcele  
 del accion le Roi, et issi le bref afferme; ovesqe ceo,

"fundatur per nomen Prioratus," as appears by charters, and neither he nor any of his predecessors were instituted by any Bishop of the place, as he is ready to aver, the King cannot assign perpetuity in him or maintain the writ against him. And if it appear to the Court that he has need to answer further, he is ready to answer as to the matters contained in the writ, as the Court, &c. After this there were several adjournments because "Curia nondum avisatur." At length "pro pleniori informatione pro domino Rege super præmissis habenda mandatum est Episcopo Wyntoniensi quod dominum Regem super institutione et destitutione ipsius Prioris vel alicujus prædecessorum suorum Priorum loci prædicti, si quis eorum per præfatum Episcopum vel aliquem prædecessorum suorum, &c. in ecclesia prædicta de Hailyng institutus vel aliqually destitutus fuerit, &c., et de aliis articulis institutionem et destitutionem prædictas tangentibus, sub sigillo suo distincte et aperte certificet." The Bishop's certificate was:—"Ecclesia de Hailing infrascripta est auctoritate Apostolica religiosis viris Abbati et Conventui de Gymmyngges appropriata, et est in eadem eccle-

sia vicaria perpetua ordinata, ad quam, cum vacaverit, dicti Abbas et Conventus, eorumve procuratores in Anglia eorundem nomine, Wyntoniensi Episcopo, qui pro tempore fuerit, clericum sæcularum præsentant, et idem præsentatus per dictum Wyntoniensem Episcopum ad dictam vicariam admissus et perpetuus vicarius institutus in eadem onera spiritualia Archidiaconalia et omnia alia debita ordinaria et consuetudine ecclesiæ incumbencia virtute ordinationis prædictæ sustinebit, nec invenimus, nostris et prædecessorum nostrorum registris diligenter scrutatis, quod Prior de Hailing, qui pro tempore fuerit, vel Willelmus Prior dictorum religiosorum procurator qui nunc est fuit Wyntoniensi Episcopo ad Prioratum infrascriptum aliqually præsentatus seu per nos, vel aliquem prædecessorum nostrorum, ratione dictæ ecclesiæ de Hailyng seu aliorum spiritualium in diocesi nostra perpetuo institutus in prioratu prædicto vel aliqually destitutus ab eodem." John de Lincoln, for the King, was asked whether he had any thing more to say on behalf of the King's right. He said, "No." Judgment was given for the Prior "salvo semper jure Regis."

Nos. 8, 9.

A.D. 1341. affirmed; besides, we tell you that others have been admitted by the Prior into the same Priory on the King's command, &c.—*R. Thorpe*. We can not plead to this when the writ does not lie against us, &c.

Note concerning process.

(8.) § Two persons sued by *Præcipe quod reddat* for certain land. At the first day one of them did not sue; wherefore a *Summoneas ad sequendum simul* issued. The tenant made default; wherefore a *Cape* issued for the whole, which was served. And the tenant now again made default, and the *Summoneas ad sequendum, &c.*, was returned late; wherefore an *Alias Summoneas* was awarded. And the demandant, who appeared, had *Idem dies*.

Trespass. See the verdict. And note that if one distrain another for rent in arrear, and the truth be that the rent is extinct, (as more fully appears in this plea), and he detain the distress, the tenant shall have a good writ of Trespass against him, and, if the whole of the facts be found,

(9.) § On a writ of Trespass against William son of Michael de Causton<sup>1</sup> and John atte Leye<sup>1</sup> in respect of a pot, and a small cup, a pan, and a table, as appears in last Michaelmas term,<sup>2</sup> where William traversed the writ, and John justified, as bailiff of William, for services, &c., the Inquest now came, and said that the land was not of William's fee, but they said that the plaintiff's father charged that land to William; but because he who charged had only a fee tail, it seemed to the plaintiff, who is son and heir, that the charge after the death of his father was extinct, wherefore he withheld the rent, and William commanded J. his bailiff, who is named in the writ, to distrain, and he did so on W.'s command, and took the pots and table.—BASSET. Was deliverance made after the taking?—THE INQUEST. No, sir.—BASSET. What was the damage, if we adjudge, &c.?—THE INQUEST. A hundred shillings.—*Thorpe*. It is found that he has neither seignory nor fee, and that the charge is extinct; so the taking was

<sup>1</sup> This is the name which appears in the record, *Placita de Banco*, Mich., 14 Edw. III., R. 485 d.,

where it also appears that the plaintiff was John Stevens, of Tottenham.  
<sup>2</sup> Y. B., M., 14 E. 3, No. 89.

Nos. 8, 9.

vous dioms qen mesme la Priorie autres ount este A.D. 1341. resceu al mandement la Roi par le Priour, &c.—  
*R. Thorpe.* Nous ne poms a ceo pleder quant le bref ne gist pas vers nous, &c.

(8.)<sup>1</sup> § Deux suyrent par *Præcipe quod reddat* de certaine terre. Lun al primer jour ne suyst pas; par quei *Summoneas ad sequendum simul* issit. Le tenant fist defaute; par quei *Cape* issit de lentier,<sup>2</sup> qest servy. Et le tenant autrefoitz ore fait defaute, et le *Summoneas ad sequendum*, &c., est retourne tarde; par quei *Summoneas sicut alias* est agarde. Et le demandant, qapiert, ad *Idem dies*.

Nota de  
proces.  
[Fitz.  
*Proses*,  
174.]

(9.)<sup>1</sup> § En un bref de Trespas porte vers William fitz Michel de Caxtone et Johan de Leyghe dune poet, et un<sup>3</sup> poscenet, pael, et table, *ut patet Michaelis ultimo*, ou William traversa le bref, et Johan justifia, come baillif William, pur services, &c., ore vient lenquest, et dit qe la terre ne fust pas del fee W., mes il disoint qe le pere le pleintif chargea cele terre a W.; mes pur ceo qe celui qe chargea navoit qe fee taille, sembloit a cestui qest pleintif, qest fitz et heir, qe la charge apres la mort son pere fust esteinte, par quei il detient la rente, et W. commanda J.<sup>5</sup> son baillif, qest nome a destreindre, et il fist issi par son comandement, et prist les potes et la table.—BASSET. Fust la deliverance fait puis la prise?—LENQUEST. Sire, nanil.—BASS. A quel damage, si nous agardoms, &c.?—LENQUEST. A cs.—*Thorpe.* Trove est qil nad seignurie ne fee, et qe la charge est esteint; issi

Trespas.  
Vide veredictum.  
Et<sup>4</sup> nota si un homme distreigne un autre pur rente ariere, et la verite est qe la rente est extynt, sicome plus pleynement apiert en ceste plee, et detient la distresse, le tenant avera un bon bref de Trespas devers luy, et si tout la verite soit trove,

<sup>1</sup> From T. and L.

<sup>2</sup> The words de lentier are not in L.

<sup>3</sup> The words et un are not in T.

<sup>4</sup> The portion of the marginal note from "Et nota" to the end is not in T.

<sup>5</sup> L., W.



## Nos. 10, 11.

A.D. 1341. against the peace.—*Gayneford*. It is found that he shall recover damages against him, as appears in this plea. came to distrain by reason of the rent granted, and that can not be said to be against the peace, for the plaintiff's issue was that we came against the peace and not for the cause alleged.—*BASSET*. *Fraus et dolus nemini debent patrocinari*. Even though you came by such false colour, that can not cover your tort, since it is out of your fee; for by Statute<sup>1</sup> you will be put to ransom.—*Gayneford*. That would be by another writ, and yet not in this case; and it is possible that he has something by descent, so that the charge would continue; and at first you had a full verdict that they were not guilty.—*HILLARY*. We will take the whole of their verdict.—*BASSET* adjudged that the plaintiff should recover.

Process discontinued.

(10.) § Note that, in Detinue of three writings, by reason of the omission of one writing in the continuance, all the process was discontinued, notwithstanding the new Statute,<sup>2</sup> which purports that process may be amended.

Note. Process in Debt. And note that if one sue a vicar or a parson by a writ of Debt, or other manner of plea, and the Sheriff return that the defendant has not any

(11.)<sup>3</sup> § Note that on a writ of Debt brought against a parson of the church of N., the Sheriff returned that he was a clerk, and had not any lay fee; wherefore a writ issued to the Bishop of Ely to cause his clerk to come. And the Bishop returned that the clerk was not beneficed in his diocese, because he had exchanged his church with the Dean of Salop in the diocese of the Bishop of Chester. And a writ issued to the Bishop of Chester to cause to come such an one—late parson of the church of N., now Dean of S. And the defendant came into Court, and de-

<sup>1</sup> 52 Hen. III. (Stat. Marl.), c. 1.

<sup>2</sup> 14 Edw. III., St. 1, c. 6.

<sup>3</sup> See No. 15 next below.

## Nos. 10, 11.

la prise contre la pees.—*Gayn.* Trove est qil vient A.D. 1341.  
 par cause de la rente graunte a destreindre, quele il recovra  
 chose ne poet estre dit contre la pees [qar son issue damages  
 fuit qe nous venimes en contre la pees]<sup>1</sup> et noun pas devers luy,  
 par tiele cause.—*BASSET.* *Fraus et dolus nemini ut patet in*  
*debent patrocinari.* Coment<sup>2</sup> vous venistes par tiel isto pla-  
 faux colour, ceo ne poet pas coverir vostre tort, quant cito.  
 cest hors de vostre fee; qar par statut vous serres  
 mys a raunseoun.—*Gayn.* Ceo serreit sur autre bref,  
 et uncore noun pas en ceo cas; et il est possible qil ad  
 par descent, issint qe la charge demoreit; et a deprimés  
 vous avez plein verdit<sup>3</sup> qil ne furent pas copables.—  
*HILL.* Nous prendrons tout le verdit deux.—*BASSET*  
 agarda qe le pleintif recoverast.

(10.)<sup>4</sup> § *Nota*, en detenue de iij. escriptz, qe par Proces dis-  
 entrelesser dun escript en la continuaunce tout le continuee.  
 proces fust discontinue, *non obstante novo statuto*, qe [Fitz.  
 voet qe proces soit amende. *Amend-  
 ment, 58.*]

(11.)<sup>4</sup> § *Nota* en un<sup>5</sup> bref de dette porte<sup>6</sup> vers *Nota.*  
 une persone del eglise de N., le Vicounte retourna qil Proces en  
 est clerc, et<sup>7</sup> navoit pas lay fee; par quei bref issit dette.  
 al Evesqe de Ely de faire venir soun clerc, qe re- Et<sup>10</sup> nota  
 tourna qil ne fust pas benefice en sa diocese, qar il si un  
 avoit chaunge sa eglise ove la Deane de Salope, qar il homme  
 diocese levesqe de Cestre. Et bref issit a levesqe de suye un  
 Cestre de faire venir un tiel, *nuper<sup>8</sup> personam ecclesie<sup>9</sup>* vicary ou  
 de N., *modo decanum de S.* Et il vient en Court, et un persone  
 par un  
 bref de  
 dette, ou  
 altro  
 manere de  
 plee, et le  
 Vicounte  
 retourne qil  
 nad pas lay

<sup>1</sup> The words between brackets are not in T.

<sup>2</sup> T., quant.

<sup>3</sup> In L. the report ends here.

<sup>4</sup> From T. and L.

<sup>5</sup> The words en un are not in T.

<sup>6</sup> porte is not in T.

<sup>7</sup> The words est clerc et are not in L.

<sup>8</sup> nuper is not in T.

<sup>9</sup> ecclesie is not in T.

<sup>10</sup> Hence to the end the marginal note is in L. alone.

## Nos. 12-14.

A.D. 1341. lay fee in his bailiwick, then the plaintiff shall have a writ directed to the Bishop, as more fully appears in this plea, &c.

manded judgment of the writ, because the plaintiff had not continued his suit against him as parson, according to the original, but by the words "late parson" supposed that the defendant was not parson, and so departed from his writ; for with regard to the plaintiff he is always parson.—HILLARY. The process of which you speak is against the Bishop, and not against the party; wherefore, on the matter, the process is good.

Audita  
Querela.

(12.) § Note that a man had execution on a Statute Merchant, and the defendant came into the Chancery and shewed an acquittance, and had a writ *Quod vocatis partibus, &c.* And upon this a *Venire facias* issued. And the party came, and said that the writ of *Venire facias* was not accordant with the *Vocatis partibus* in his surname, and took exception to it.—*Derworthy*. The *Venire facias* is in accordance with the acquittance, and by that name you released.—HILLARY. Then your writ of *Vocatis partibus* ought to have mentioned that, and it does not; and therefore do you, Recognisee, sue execution for the residue which is not executed.

Note of a  
Crown  
case.

(13.) § Note that at Bedford, before KELSHULLE, a Prior had appealed a man, who was taken by reason of the appeal. And he admitted the appeal to be good, and would have appealed others. And because this was a proof for the appellor, the appellee was hanged. And the same case was adjudged there when another robber was taken at the suit of the party.

Audita  
Querela.

(14.) § John Somery made a recognizance on Statute

## Nos. 12-14.

demanda jugement du bref, pur ceo qe le plentif navoit  
 mye continue sa suyte vers lui come vers persone, sou-  
 longe loriginal, mes par la parole *nuper personam* sup-  
 pose qil nest pas persone, issi departist il de son bref ;  
 qar eiant regard al pleintif il est tout temps persone.  
 —HILL. Le proces dont vous parrees cest vers levesqe,  
 et noun pas vers la partie ; par quei, sur la matere, le  
 proces est bon.

A.D. 1341.  
 fee deinz  
 sa baillie,  
 donques la  
 partie  
 pleintif  
 avera un  
 bref direct  
 al Evesqe,  
 sicome plus  
 pleyne-  
 ment piert  
 en cesti  
 plece, &c.

(12.)<sup>1</sup> § *Nota* qun homme avoit execucion<sup>2</sup> sur  
 estatut marchant, et le defendant vient en Chauncel-  
 lerie et moustra acquitance, et avoit bref *Quod vocatis*  
*partibus*. Et sur ceo *Venire facias* issit. Et la  
 partie vient, et dit qe le bref de *Venire facias* ne  
 fust pas accordant al *Vocatis partibus* en son sur-  
 noun, et le chalengea.—*Derworth*. Le *Venire facias*  
 est acordant al acquitance, et par tiel noun relessastes  
 vous.—HILL. Donques dust vostre bref de *Vocatis*  
*partibus* aver fait mencion de cela, et ceo ne fait il  
 pas ; et pur ceo vous reconise suez execucion del  
 remenant qe nest pas execut.

Audita  
 Querela.  
 [Fitz.  
*Variauna*,  
 70.]

(13.)<sup>1</sup> § *Nota* qe a Bedeford, devant KELS., un Priour  
 avoit apele un homme, qe<sup>2</sup> fust pris par lapele. Et le  
 conust estre bon ; et voleit aver apele autres. Et pur  
 ceo qe ceo fust un derene pur lapelour, lapele fust  
 pendu. Et mesme le cas fust ajuge illoeqes ou un  
 autre<sup>4</sup> laroun fust pris a suyte de partie.

Nota de  
 Corona.

(14.)<sup>5</sup> § Johan Somery fist une reconisance sur es-

Audita  
 Querela.

<sup>1</sup> From T. and L.

<sup>2</sup> execucion is not in L.

<sup>3</sup> T., et.

<sup>4</sup> autre is not in L.

<sup>5</sup> From T. and L. The record of  
 this case is among the *Placita de*  
*Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 202,  
 as follows :—"Præceptum fuit Vice-

" comiti (cum ex parte Johannis  
 " Somery de comitatu Devonie  
 " domino Regi esset ostensum quod  
 " cum ipse nuper recognovisset se  
 " debere, juxta formam Statuti pro  
 " Mercatoribus apud Actone Bur-  
 " nel editi, Nicholao de Teukesbury  
 " clerico trescentas libras eidem

[Fitz.  
*Audita*  
*Querela*,  
 10.]

## No. 14.

A.D. 1341. Merchant to Nicholas de Tewkesbury; and Nicholas had execution. And John came into the Chancery and shewed that he had made satisfaction, and produced the statute cancelled in lieu of acquittance, and further made his suggestion that Nicholas had caused another statute to be counterfeited, and had made suit thereon until he was ousted from his land. And he had a writ to the Justices on his case, *Quod vocatis coram vobis partibus*, and that they should do right. And upon this a *Venire facias* issued against Nicholas to come and answer as to the deceit.—*Thorpe*. You have here Nicholas, who tells you that he does not understand that without an original writ you will put him to answer; for this is not a deceit committed in this Court, as it is when land is lost by default.—*HILLARY*. Answer, if you will, for we have sufficient warrant.—*Thorpe*. The words of the writ are “caused to be counterfeited;” so he is not by the writ made the principal actor; judgment of the writ:

“Nicholao ad certos terminos in  
“literis obligatoriis de recognitione  
“illa contentos solvendas, et licet  
“idem Johannes præfato Nicholao  
“de debito prædicto postmodum  
“plene satisfecerit, dictæque literæ  
“obligatoriæ eidem Johanni pro  
“securitate sua in hac parte per  
“præfatum Nicholaum fuissent li-  
“beratæ et penes eundem Johan-  
“nem adhuc sic existant, prædictus  
“tamen Nicholaus, machinans præ-  
“fatum Johannem indebite præ-  
“gravare, quasdam alias literas  
“obligatorias de debito supradicto  
“falso et subdole controfleri fecit,  
“quarum prætextu ac cujusdam  
“processus coram Justiciariis hic  
“super quodam brevi Regis ad  
“prosecutionem ipsius Nicholai  
“super dictis literis sic controfactis  
“et quadam certificatione inde in

“Cancellaria Regis facta impetrato  
“et per Vicecomitem Regis Devo-  
“nim hic retornato habiti, per quod  
“breve præceptum fuit eidem Vice-  
“comiti quod corpus prædicti Jo-  
“hannis, si laicus esset, caperet  
“et in prisona Regis salvo custo-  
“diri faceret donec eidem Nicholao  
“de centum et quadraginta et qua-  
“tuor libris de prædictis trescentis  
“libris esset satisfactum, et ad  
“quod breve idem Vicecomes re-  
“tornavit quod prædictus Johannes  
“inventus non fuit, per Justiciarios  
“hic consideratum existit quod  
“omnia terræ et tenementa ipsius  
“Johannis in comitatu prædicto  
“præfato Nicholao liberentur, et  
“juxta considerationem illam aliqua  
“terræ et tenementa ipsius Johan-  
“nis præfato Nicholao sunt liberata  
“tenenda ut liberum tenementum

## No. 14.

tatut marchant a Nicolas<sup>1</sup> de Teukesbury; et Nicolas<sup>1</sup> A.D. 1341. avoit execucion. Et Johan vient en la Chauncellerie et moustra qil avoit fait gree, et mist avant lestatut dampne en lieu dacquittance, et fist outre sa suggestion qe Nicolas<sup>1</sup> fist controver<sup>2</sup> un autre estatut, et par cele fait<sup>3</sup> suyte tanqil fust ouste de sa terre. Et avoit<sup>4</sup> bref as Justices sur son cas, *Quod vocatis coram vobis*<sup>5</sup> *partibus*, et qil feissent droit. Et sur ceo *Venire facias* issit vers Nicolas<sup>1</sup> de venir a respondre a la desceit.—*Thorpe*. Vous avez icy Nicolas,<sup>1</sup> qe vous dit qil nentend pas qe saunz bref original lui voles mettre a respondre; qar ceo nest pas desceite fait ceinz, come cest<sup>6</sup> de terre perdu par defalte.—*HILL*. Respondez, si vous voillez, qar nous avoms garrant assetz.—*Thorpe*. Le bref voet *controfieri fecit*; issi nest il pas fait par bref principal fesour; jugement du bref; qar si homme

" suum quousque debitum prædic-  
 " tum levaverit de eisdem, in ipsius  
 " Johannis grave damnum et de-  
 " pauperationem manifestam, Jus-  
 " ticiariusque hic mandaverit do-  
 " minus Rex quod, vocatis coram  
 " eis præfato Nicholao, et visis et  
 " inspectis tam recordo et pro-  
 " cessu hic super dicto negotio  
 " habitis quam literis obligatoriis  
 " supradictis, auditaque super hoc  
 " querela ipsius Johannis, et etiam  
 " auditis tam rationibus suis quam  
 " prædicti Nicholai super præmis-  
 " sis, partibus prædictis in hac parte  
 " debitum et festinum justitiæ com-  
 " plementum fieri facerent, prout  
 " secundum legem et consuetudi-  
 " nem regni Regis Angliæ fuerit  
 " faciendum) quod venire faceret  
 " hic ad hunc diem prædictum  
 " Nicholaum super præmissis re-  
 " sponsurum et ulterius facturum

" et recepturum quod Curia, &c.,  
 " et quod interim de executione  
 " super recognitione prædicta ei-  
 " dem Nicholao ulterius facienda  
 " supersederet omnino." . . . .  
 " . . . . Nicholas, not admitting  
 " that he caused any letters to be  
 " counterfeited, says execution ought  
 " not to be delayed, because he says  
 " the letters obligatory as to the 300*l*.  
 " were not delivered as John had  
 " stated. Issue was joined thereon.  
 " John made default at *Nisi prius*.  
 " Ideo prædictus Nicholaus habeat  
 " executionem."

<sup>1</sup> T. and L., William.

<sup>2</sup> L., trover.

<sup>3</sup> fait is not in T.

<sup>4</sup> avoit is not in T.

<sup>5</sup> The words *coram vobis* are not in T.

<sup>6</sup> cest is not in L.

## No. 14.

A.D. 1341. for if one cause another to be beaten, or a nuisance to be raised, still the writ shall make him the doer, and otherwise it is not good.—*Pole*. To do by one's self and to cause another to do, is to one intent.—*Thorpe*. That proves the writ to be bad; for then the writ ought to fix the tort in him as principal.—*Pole*. The making of this false statute does not harm us, but the execution on it does, and in that suit you are the principal actor.—*HILLARY*. The writ is good enough.—*Thorpe*. Whereas he supposes that we delivered up to him the statute in lieu of an acquittance, and that he made satisfaction to us, we did not deliver any statute to him, nor did he make satisfaction to us; ready, &c.—*Gayneford*. The words of our writ of Deceit are *visis literis prædictis obligatoriis, audita querela et rationibus*, &c.; wherefore, at the commencement, we pray that you shew the statute by which you wish to have execution.—*Thorpe*. Although several things may be comprised in the writ, it suffices for us to answer on that point which might destroy your action; and that we have done, and we have not a day to shew the statute; and if, after we have execution by judgment, the statute be lost or burnt, still we shall hold the land in peace.—*Pole*. If it were produced, we should have an issue thereupon; and as to the deceit, that is to say, that he has counterfeited a false statute, he answers nothing; judgment. And what he offers to aver, that is to say, that he did not deliver to us any statute, is not an issue; for if another on his behalf delivered it to us, or if we forcibly took it from him and he counterfeited another, still he would be punishable for that deceit.—*Thorpe*. We have given a certain answer which destroys your action, and we offer to aver it, which averment you refuse; judgment.—*Blaik*. We say that you delivered to us the statute; ready, &c., if the Court will accept it.—And then the COURT accepted the averment.

## No. 14.

face batre un aultre, ou lever un nusaunce, uncore le A.D. 1341.  
 bref lui fra fesour, et autrement nest il pas bon.—  
*Pole.* Faire mesme et faire un aultre faire, est dune  
 entente.—*Thorpe.* Ceo prove le bref malveys; qar  
 donques dust le bref attacher principalement le tort en  
 lui.—*Pole.* La fesaunce de ceo faux estatut ne nous  
 greve pas, mes fait lexecucion hors de cel, de quele  
 suyte vous estes fait principal fesour.—*HILL.* Le bref  
 est assetz bon.—*Thorpe.* La ou il suppose qe nous lui  
 baillames lestatut en lieu dacquittance, et qil fist nostre  
 gree, nous lui liverames nul estatut, ne il ne fist pas  
 nostre gree; prest, &c.—*Gayn.* Nostre bref de desceite  
 voet<sup>1</sup> *visis literis prædictis obligatoris, audita que-*  
*rela et rationibus, &c.*; par quei, al comencement, nous  
 prioms qe vous mostrez lestatut par quel vous voillez  
 aver execucion.—*Thorpe.* Mesqe plusours choses soient  
 compris el bref, il nous suffit a respondre a ceo qe  
 purreit destruire<sup>2</sup> vostre accion; et ceo avoms fait, et  
 nous navoms pas jour de moustrer lestatut; et si  
 apres ceo qe nous avoms execucion par agard qe les-  
 tatut fust perdu ou ars, uncore nous tendroms la terre  
 en pees.—*Pole.* Sil fust mys avant, nous averoms issu  
 sur cele; et a la desceite qil ad controfet un faux  
 estatut, il respond nient; jugement. Et ceo qil tend  
 daverer qil nous livra nul estatut, nest issu; qar si  
 autre nous le livra de sa part, ou si nous le ravimes  
 de lui et il controfist un autre, uncore de cel disceit  
 serreit il punisable.—*Thorpe.* Nous avoms done certain  
 respouns qe destruit vostre accion, et le tendoms da-  
 verer, quel averement vous refusez; jugement.—*Blak.*  
 Qe vous nous baillastes lestatut; prest, &c., si Court le  
 voet accepter.—Et puis la COURT resceut laverement.

<sup>1</sup> voet is not in L.| <sup>2</sup> L., destruire.



## Nos. 15, 16.

A.D. 1341.  
Debt.

(15.) § Debt brought against John de Weston, parson of the church of Little Grantesdene. The Sheriff returned that he was a clerk and had not a lay fee. A writ issued to the Bishop to cause his clerk to come, and he returned that the clerk had not a benefice in his diocese, because he had made an exchange with the Dean of Salop in the diocese of the Bishop of Coventry and Lichfield. Therefore a writ issued to the Bishop of Coventry and Lichfield to cause to come J. de Weston, the Dean of Salop, heretofore parson of the church of Little Grantesdene. And J. came.—*Thorpe*. Judgment of the writ; for his writ supposes J. to be parson, and his process supposes that he was heretofore parson, and thus the process is not warranted by the original.—*HILLARY*. The process is good upon his matter, for the Bishop of Ely could not have caused the parson of Grantesdene to come when he had changed his church, nor could the Bishop of Coventry and Lichfield have caused the parson of Grantesdene to come, because the church is not in his diocese; and the process is made against the Bishop and not against the party.—*Thorpe*. J. was not parson of the church of Little Grantesdene on the day of the purchase of the writ.—*Pole*. The writ is accordant with the specialty and the obligation.—*Thorpe*. What of that? You will have a writ *Præcipe J. nuper personæ*, &c.—*Pole*. He was parson of Little Grantesdene on the day of the purchase of the writ; ready, &c.—And the other side said the contrary.<sup>1</sup>

Formedon.

(16.) § A. brought a Formedon on a gift made by M.—*Thorpe*. He cannot demand anything; for we tell

<sup>1</sup> It appears by the record that the jury found that on the day of the purchase of the writ, and long afterwards, John was parson of

Little Grantesdene, and assessed the damages at 60*l*. Judgment was given for the plaintiff for the debt and damages.

Nos. 15, 16.

(15.)<sup>1</sup> § Dette porte vers Johan de Westone, persone A.D. 1341.  
 del eglise de Petit Grandesdene. Le Vicounte retourna <sup>Dette.</sup>  
*quod clericus est et non habet laicum feodum.* Bref <sup>[Fitz.</sup>  
 issit al Evesqe de faire venir son clerc, qe retourna <sup>Briefs,</sup>  
 qil navoit pas benefice en sa dyocese, qar il avoit <sup>321.]</sup>  
 change ove la Deane de Salope en la deocese levesqe  
 de Coventre et Lichefeld. Par quei bref issit al Evesqe  
 de Coventre et de Lichefeld de faire venir J. de  
 Westone, le Deane de Salope, jadis persone del eglise  
 de Petit G. Et J. vient.—*Thorpe.* Jugement du bref;  
 qar son bref suppose J. estre persone, et son proces  
 suppose qil fust jadis persone, et issi le proces nient  
 garranti del original.—*HILL.* Le proces est bon sur sa  
 matere, qar levesqe de Ely ne poait aver fait venir la  
 persone de G. quant il avoit chaunge sa eglise, ne  
 levesqe de C. et L. ne poait aver fait fait venir la  
 persone de G., qar leglise nest pas en sa diocese; et le  
 proces est fait vers levesqe et noun pas vers la partie.  
 —*Thorpe.* J. ne fust pas persone del eglise de Petit  
 G. jour du bref purchace.—*Pole.* Le bref est acordant  
 al especialte et lobligacion. — *Thorpe.* De ceo qey?  
 Vous averez bref *Præcipe J. nuper personæ, &c.*—  
*Pole.* Il fust persone de Petit G. jour du bref pur-  
 chace; prest, &c.—*Et alii e contra.*

(16.)<sup>2</sup> § A. porta forme doun dun doun fait par M. <sup>Forme de</sup>  
 —*Thorpe.* Il ne poet rien demander; qar nous vous <sup>doun.</sup>  
<sup>[Fitz.</sup>  
<sup>*Estoppell,*</sup>  
<sup>239.]</sup>

<sup>1</sup> From T. and L. See No. 11 next above. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 123, d. It there appears that the action was brought by Richard de Swynnerton against John de Weston, parson of the church of Little Grantesdene (probably Gransden in Cambridgeshire). It was

alleged that the defendant had bound himself by specialty to pay the plaintiff 1,000*l.* in St. Paul's Church, London.

<sup>2</sup> From T. and L. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 158. It there appears that the action of Formedon in the Descender was brought by Henry de

## . No. 16.

A.D. 1341. you that M., on whose gift, &c., and one T. purchased these tenements from one B., to hold to them and the heirs of T., of our father and his heirs. And this T. was a bastard, and died without heir of his body; wherefore we brought a writ of Escheat and recovered; and the estate and the gift were mesne between the seisin of our tenant and our recovery; judgment, &c.—*Gayneford*. We tell you that M. and T. purchased to them and their heirs; and we tell you that M. the donor survived; judgment; and we pray seisin.—*Thorpe*. You shall not be admitted to say that M., whom you suppose to have given, had a fee; for we tell you that a fine was levied, in the time of King Edward, the King's grandfather, between B., of whom T. and M. purchased, and the same T. and M., by which B. rendered to them and the heirs of T.—(and he shewed a transcript of the fine);—judgment whether, contrary to the fine, to the averment, &c.—*Gayneford*. We are strangers to the fine.—*Thorpe*. We are agreed that T. and M. purchased from the same B. who was party to the fine, and nothing is in dispute except the manner of the purchase, as to which we shew a fine of record to prove our intention.—*Gayneford*. Then do you refuse the averment?—

Clyfford and Matilda, his wife, against Fulk Fitz-Waryn, in respect of a messuage, lands, and rent, in Budesfeld nigh Bisley (Gloucestershire), which, as alleged, Margery de Sodyngton gave to Margery la Blount of Cerney in tail, and which, after the death of Margery la Blount, ought to descend to the aforesaid Matilda as her daughter and heir. Fulk vouches to warranty Thomas de [sic] Rotheryk, who comes, and warrants, and says Henry and Matilda cannot claim,

because one Richard le Machoun held the tenements "de Rotherico" filio Griffini patre ipsius Thomæ," that Richard enfeoffed Thomas de Sodyngton and Margery la Blount (the latter being the same Margery as they above called Margery de Sodyngton), to hold to them, and the heirs of Thomas, of the chief lords. The warrantor alleges further that Thomas [de Sodyngton] was a bastard, and died seised without heir "de se," wherefore he (Thomas de Rotheryk)

## No. 16.

dioms qe M., de qi doun, &c., et un T. purchacerent A.D. 1341. ceux tenementz dun B., a tenir a eux et les heirs T., a tenir de nostre pere et de ses heirs; le quel T. fust bastard et morust sanz heir de soi; par quei nous portames bref deschete et recoverimes; et lestat et le doun furent mene entre la seisine nostre tenant et nostre recoverir; jugement, &c.—*Gayn*. Nous vous dioms qe M. et T. purchacerent a eux et a lour heirs; et vous dioms qe M. qe dona survesquist; jugement; et prioms seisine.—*Thorpe*. A dire qe M., qe vous supposez qe dona, avoit fee navendres pas; qar nous vous dioms qe fyne se leva en temps de Roy E.,<sup>1</sup> lael le Roi,<sup>2</sup> entre B., de qi T. et M. purchacerent, et mesmes ces T. et M., par quel B. rendi a eux et a les heirs T. (et moustra transcript de la fyne); jugement si, contre la fyne, al averement, &c.—*Gayn*. Nous sumes estrange a la fyne.—*Thorpe*. Nous sumes a un qe T. et M. purchacerent de mesme celui B. qe fust partie a la fyne, et rien est en debate forsque la manere de purchase, de quei nous moustroms fyne de record de prover nostre entente.—*Gayn*. Donques re-

brought writ of Escheat against Matilda, late wife of Miles de Rodaborough, and Matilda, late wife of Robert Bothel, in respect of the said tenements . . . and recovered. The warrantor further alleges that the estate which Margery la Blount had was mesne between the seisin of Thomas de Sodyngton and, his recovery, which estate was annulled by the judgment, and he prays judgment whether the demandants ought to have action against him. The demandants say "quod prædictus Ricardus dedit tenementa illa prædictis Thomæ de Sodyngton et Margeriæ et eorum

"heredibus, quæ quidem Margeria supervixit prædictum Thomam de Sodyngton et ita habuit feudum in eisdem, et eadem tenementa dedit prædictæ Margeriæ la Blount in forma prædicta. Et hoc parati sunt verificare, et unde petunt iudicium." Thomas the warrantor repeats that the gift was to Thomas de Sodyngton and Margery and the heirs of Thomas. Issue was joined thereon. The award of *Venire* appears on the roll, but not the verdict.

<sup>1</sup> The words de Roy E. are not in T.

<sup>2</sup> The words le Roi are not in L.

## No. 17.

A.D. 1341. *Thorpe*. Ready, &c., that they were seised to hold to them and the heirs of T. according to the purport of the fine.—*Gayneford*. Nothing shall be entered on the roll as to the fine, for it is only evidence and not proof against us who are strangers; and we will aver that they purchased to hold to them and their heirs.—*Thorpe*. The fine shall be entered; for if they had first purchased to hold to them and their heirs, and afterwards that fine was levied, they would hold according to the purport of the fine.—And then the issue was entered without taking notice of the fine.

Assise of  
Novel  
Disseisin.

(17.) § The plaint was made in respect of rent. And by bailiff the matter was pleaded to the Assise. And by direction of the COURT the plaintiff had to show in respect of what kind of rent he made his plaint, and he said that it was rentcharge. And he produced a specialty, which purported that such an one granted 20s. of rent to the plaintiff, to be taken in his manor of N., that is to say, so much through the hand of such an one a tenant, and so much by the hand of such an one, &c. And by verdict it was found that those tenants were tenants at will; and the seisin of the rent was found; and it was found that rescue was made of a distress taken, &c., for which rescue he against whom the writ was brought made satisfaction.—*Thorpe*. It is found that there are divers rents, for each portion is separately charged, for which several writs would lie and not a single writ; for the case of rentcharge is different from that of rent service, which may be parcel of a manor.—HILLARY. By the first clause in the deed the whole of the manor is charged with the rent, and by no words afterwards is it discharged.—*Thorpe*. If there were no other words

## No. 17.

fuses vous laverement?—*Thorpe*. Prest, &c., qil furent A.D. 1341. seisi a eux et a les heirs T. solonc purport de la fyne.—*Gayn*. Rien serra entre en roulle de la fyne, qar il nest<sup>1</sup> forsque evidence et noun pas prove<sup>2</sup> vers nous qe sumes estrange; et voloms averer qil purchacerent a eux et lour heirs.—*Thorpe*. La fyne serra entre; qar sil ussent primes purchace a eux et a lour heirs, et puis cele fyne fust leve, il tendrent solonc purport de la fyne.—Et puis lissu est entre sanz aver regard a la fyne.

(17.)<sup>3</sup> § La pleynte fust fait de rente. Et par baillif fust plede al assise. Et par COURT le pleintif moustra de quele manere de rente, et il dit qe de charge.<sup>5</sup> Et moustra avant especialte, qe voleit qun tiel graunta xxs. de rente al pleintif, a prendre en son manoir de N., cest a<sup>6</sup> saver, taunt par my la mayn un tenant tiel,<sup>7</sup> et taunt par my la mayn un tiel, &c. Et par verdit fust trove qe sez tenantz furent tenantz a volunte; et trove fust la seisine de la rente, et qe rescous fust fait dun destresse pris, &c., de quel rescous celui vers qi le bref est porte sagree.—*Thorpe*. Trove est qe ceux sont diverses rentes, qar chescun parcelle est severalment charge, de quei several, &c., et noun pas un bref girreit; qar cest autre de rente charge qe de rente service, qe purra estre parcelle du manoir.—*HILL*. Par la primer clause<sup>8</sup> en le fet tout le manoir est charge de la rente, et par nul parole apres est il descharge.—*Thorpe*. Sil y avoit nul autre parole apres fors la

Assisa  
Novæ  
Disseisinæ.<sup>4</sup>  
[Fitz.  
Charge, 9;  
15 Li. Ass.,  
11.]

<sup>1</sup> The words qar il nest are not in L.

<sup>2</sup> prove is not in L.

<sup>3</sup> From T. and L.

<sup>4</sup> L., Assise de rente, instead of Assisa Novæ Disseisinæ.

<sup>5</sup> L., descharge, instead of de charge.

<sup>6</sup> The words cest a are not in T.

<sup>7</sup> tiel is not in T.

<sup>8</sup> L., cause.

## No. 18.

A.D. 1341. afterwards but the first clause, which purports that the rent is to be taken in his manor, I quite believe that the manor would be charged; for to be taken in the manor and to be taken of the manor would perchance have the same effect; but when the charge is afterwards limited by a special clause with certainty, the judgment shall be in accordance with the special clause, and not generally that the rent issues from the entire manor; for if I were to give land to you, and there rest, you would have a freehold, but by the subsequent *habendum et tenendum* I could limit to you a term for years.—HILLARY. I know well that by nontenure of parcel of the manor the writ will abate.—And it was also said and proved that although they were divers rents the writ would lie.—And afterwards seisin was awarded, as of rent which was issuing from the manor, &c.

Assise of  
Novel  
Disseisin.

(18.) § Assise. The bailiff pleaded misnomer of vill, and should the naming be found good, then that another person is tenant of the rent who is not named in the writ. It was found by the Assise that the vill was rightly named, and it was found further that he against whom the writ was brought held of the plaintiff, and that he who now brought the writ granted these services to him in whom the tenancy was alleged to be, on a certain condition, that, if the plaintiff should pay to the grantee certain money at a certain time, it should be lawful for him to re-enter, and if not, &c., and that within the term the grantor tendered the money and the other refused them; and it was found that the tenant attorned on the condition, and that after the refusal the tenant always paid the rent to the grantee, and that the plaintiff made a distress which was rescued.—*Thorpe*. It is found that the rent was continually

## No. 18.

primere clause,<sup>1</sup> qe voet a prendre en son manoir, jeo A.D. 1241.  
croi bien qe le manoir serreit charge; qar a prendre  
en le manoir et del manoir serreit par cas dun effect;  
mes quant la charge est determine par clause<sup>1</sup> espe-  
cial apres en certain, homme ajuggera solonc la clause<sup>1</sup>  
especial, et noun pas generalment qe la rente sourd  
del manoir entier; qar jeo dorray terre a vous, et si  
reposasse la, vous averez frank tenement, et par le  
aver et tenir apres ceo vous tailleray terme daunz.—  
HILL. Jeo say bien par nountenue de parcelle del  
manoir le bref abatra.—Et fust parle auxi et prove  
qe tout furent ils divers rentes qe le bref girreit.—Et  
puis seisine fust agarde [come rent qe fuit issant del  
manoir, &c.].<sup>2</sup>

(18.)<sup>3</sup> § Assise. Le bailif pleda a mesnomer de ville, Assisa  
Novæ  
Disseisine.  
et, si trove soit, qe<sup>4</sup> autre est tenant de la rente  
nient nome. Trove fuit par assise la ville bien nome, [Fitz.  
Assise, 95;  
15 Li. Ass.,  
12.]  
et trove fuit outre qe celui vers qi le bref est porte  
tient del pleintif, et qe celui qore porte bref graunta  
ses services a celui en qi la tenance est allege, sour  
certeine condicion, qe si le pleintif paiast certain  
deners a certain temps al graunte, qe lirreit a lui a  
reentrer, et si noun, &c., et deinz le terme le grantour  
tendist les deners et lautre les refusa; et trove fust  
qe le tenant attourna sur la condicion, et qe apres  
le refuser le tenant fist la rente touz jours al graunte,  
et qe le pleintif fist distresse qe fust rescous.—*Thorpe.*  
Trove est le paiement de la rente continuelment al

<sup>1</sup> L., cause.<sup>2</sup> The words between brackets  
are not in T. or L., and have been  
supplied from Fitz. and the Li. Ass.<sup>3</sup> From T. and L.<sup>4</sup> qe is not in T.



## No. 19.

A.D. 1341. paid to the grantee, so he is tenant; judgment of the writ.—*Blayk*. It is found that the grant was on condition, and the condition was performed, wherefore the rent revested in the grantor, and afterwards he distrained, which is in lieu of entry, and that which the tenant has paid since is only a charge and payment of his own accord, and is not the same rent, and so there is no other tenant but he who is named.—*HILLARY*. How should the grantor have the assise for rent any more than for land, if he had not been seised in later time?—*Thorpe*. The grant was simple, and the condition was by a collateral deed, and when the tenant attorned, it was in accordance with the grant, and he is a stranger to the condition; wherefore it seems that he is of necessity a stranger to the grantor.—*Stouford*. He is not; for he attorned according to the condition; but whether the grantee has right or not, it seems that he is still tenant of the rent.

Assise of  
Novel  
Disseisin.  
And so note  
that when  
a villein  
purchases  
land, if he  
aliene the  
same land  
before the  
lord can  
enter, the  
alienation  
is good;  
and if the  
lord enter  
afterwards  
and be

(19.) § The Prior of Christ Church, London, brought an assise of Novel Disseisin, in respect of certain tenements in the county of Hereford. The tenant alleged joint-tenancy by a deed; judgment of the writ.—*Thorpe*. He whose deed you produce was our villein, and held the same tenements in villenage, and aliened to you and to him with whom you allege the joint-tenancy, which alienation was a disseisin to us, and thereupon we entered, and were seised until disseised by you and the others named in the writ; judgment whether by his feoffment, which was so defeated, you can abate our writ.—*Gayneford*. To try whether the feoffor was a villein, or held in villenage or not, we can not be a party without our

## No. 19.

graunte, issi est il tenant; jugement du bref.—*Blayk.* A.D. 1341. Trove est qe le graunte fust sur condicion, et la condicion<sup>1</sup> forny, par quei la rente revest<sup>2</sup> en le grantour,<sup>3</sup> et puis il destreigne, qest en lieu dentrer, et ceo qe le tenant ad paie puis nest forsque charge et paiement de gree, et noun pas mesme la rente, et issi ny ad il autre tenant forsque celui qest nome.—*HILL.* Coment avereit le grantour lassise, sil nust este seisi de puisne temps, puis de rente qe de terre?—*Thorpe.* Le graunt fust simple, et la condicion par fet de coste,<sup>4</sup> et quant le tenant attourna, ceo fust solonc le graunt, et a la condicion est il estraunge; par quei il semble qil est de necessite estrange del grantour.—*Stouf.* Non est; qar il attourna solonc la condicion; mes le quel le graunte ad dreit ou noun, il semble qil est tenant uncore de la rente.

(19.)<sup>5</sup> § *Prior ecclesie Christi, Londoniarum*, porta une assise de novele disseisine de certains tenementz en le counte de Hereford.<sup>7</sup> Le tenant allegea joyntenance par fet; jugement du bref.—*Thorpe.* Celui qi fet vous mettes avant fust nostre vileyn, et tient mesmes les tenementz en vilenage, et aliena a vous et celui ove qi vous allegez la joyntenance, quele alienacion fust disseisine a nous, sur quei nous entraines, et seisi fumes tanqe par vous et les autres nomes el bref disseisi; jugement si par le feffement<sup>8</sup> celui qe fut issi defait puisse nostre bref abatre.—*Gayn.* A ceo ne pooms<sup>9</sup> estre partie a trier si [le feffour fust vileyn, ou tient en vilenage ou noun, sanz nostre

Assisa  
Novæ  
Disseisinæ.  
Et sic nota  
qe quant  
un vileyn  
purchace  
terre, sil  
aliene  
mesme la  
terre de-  
vant ceo  
qe le  
seignour  
put entrer,  
lalienacion  
est bone; et  
si le seign-  
our entre  
apres et

<sup>1</sup> The words et la condicion are not in L.

<sup>2</sup> L., rien est.

<sup>3</sup> T., donour.

<sup>4</sup> L., cesti.

<sup>5</sup> From T. and L.

<sup>6</sup> Hence to the end the marginal note is from L. alone.

<sup>7</sup> L., Herforth.

<sup>8</sup> L., seisine.

<sup>9</sup> L., poez.

## No. 20.

A.D. 1341. companion, for that which you put for plea is only ousted by the alienee, and the disseisee bring assise, and the whole of the facts be found, he shall recover nothing, as appears in this assise, and also at common law, &c. title.—*Thorpe*. It is not so; but it destroys the joint-tenancy as much as if we had said that you had purchased jointly, as you say, by the charter, and then had aliened and retaken an estate to you alone, or as if we had said that we had recovered against you for the disseisin, and that then you had afterwards disseised us.—*Gayneford*. If you had recovered by assise, the matter would then have been tried which remains in this case to be tried. And as to the other point, if you had alleged a divesting of the estate taken by the feoffment, and then a disseisin by us alone, we should have had a more favourable case, since there was only an entry as you allege, which we do not admit; but we demand judgment, since you do not maintain your writ as the law requires.—*Scor*. But because you can not deny the joint-tenancy, this COURT adjudges that you take nothing by your writ, and be in mercy.

Execution  
on a  
Statute.

(20.) § Roger Rogeroun sued execution on a Statute Merchant against G. The Sheriff returned *Non est inventus*; wherefore execution was awarded. The Sheriff returned that G. had no land or rent, save that he had leased certain land to A. for A.'s life, rendering to him for the first six years two quarters of wheat and three of barley, and after the six years, if the tenant held longer,

## No. 20.

compaignoun, qar]<sup>1</sup> ceo qe vous facez par plee<sup>2</sup> nest A.D. 1341.  
 forsque<sup>3</sup> title.—*Thorpe*. Noun est pas; mes destruit soit ouste  
 la joyntenance auxi avant come si nous ussoms dit<sup>4</sup> par laliene,  
 qe vous ussez purchace joyntement, come vous parlez, et le dis-  
 par la chartre,<sup>5</sup> et puis ussez aliene et repris estat seisi porte  
 a vous soulement, ou qe nous ussoms dit qe nous lassise, et  
 ussoms recovery vers vous de la disseisine, et puis tut la  
 vous nous ussez disseisi.—*Gayn*. Si vous ussez verite soit  
 recoveri par assise, la serreit la chose trie qe demoert trove, il ne  
 en ceo cas a trier. Et quant a lautre point, si vous recovers  
 ussez allege demise de lestat prise par le feffement, riens, ut  
 et puis une disseisine par nous soul, nous ussoms ew<sup>6</sup> patet in  
 pluis favorable cas, quant il ny avoit forsquon entre ista assisa,  
 come vous allegez, quele chose nous ne conisoms pas; et auxi a  
 mes demandoms jugement, del houre qe vous ne la comune  
 meynteinez pas vostre bref auxi come ley voet.—*Scot*.<sup>7</sup> ley, &c.  
 Mes pur ceo qe<sup>8</sup> vous ne poez dedire la joyntenance, [15 Li.  
 agarde cest COURT qe<sup>9</sup> vous ne preignez rien par Ass., 13.]  
 vostre bref, et soiez en la mercie.<sup>10</sup>

(20.)<sup>11</sup> § Roger Rogeroun<sup>12</sup> suyst execucion hors Execucion  
 destatut marchant vers G. Le Vicounte retourna hors dune  
*est inventus*; par quei execucion fust agarde. Le estatut.  
 Vicounte retourna qil navoit nule terre ne rente, sauf [Fitz.  
 qil avoit lesse certain terre a A. a sa vie, rendant Execucion,  
 a lui les primers vj. aunz ij. quarters de frument et 63.]  
 iij. dorge, et apres les vj. aunz, si le tenant tenist outre,

<sup>1</sup> For the words between brackets there are substituted in L. the words nostre compaignoun tynt les tene-  
 mentz en villenage ou noun saunz  
 luy, et.

<sup>2</sup> The words par plee are not in L.

<sup>3</sup> forsque is not in L.

<sup>4</sup> T., deissoms.

<sup>5</sup> L., come la chartre suppose, instead of come vous parlez par la chartre.

<sup>6</sup> L., sumes eu, instead of ussoms ew.

<sup>7</sup> T., *Stouf*.

<sup>8</sup> The words Mes pur ceo qe are not in T.

<sup>9</sup> L., par quei, instead of agarde cest COURT qe.

<sup>10</sup> The words et soiez en la mercie are not in L.

<sup>11</sup> From T. and L.

<sup>12</sup> T., Rogerum.

## No. 20.

A.D. 1341. 100s. by the year.—*Thorpe*. The Sheriff does not know whether the rent reserved be a chattel or a freehold. But to move you, we tell you that it is a freehold, for the tenant has a freehold in the land, and the rent is reserved for all the time that he shall hold, so that the lessor has as high an estate in the rent as the tenant has in the land; wherefore we pray execution; and even though the rents be different, being of corn and money at different times, still the whole is a freehold, and seisin of one gives by law an assise for the other.—*BASSET*. In the corn rents there is only a term of years, and then afterwards it is at the will of the tenant whether he will hold the land or not, and if he hold only for the term, then it is only a chattel; then the law does not allow a certain judgment and execution to be given of a thing which is uncertain.—*Thorpe*. It is the same with every tenant for term of life, for he can at his will surrender his estate to his lessor; but in this case, for the uncertainty, you will adjudge the tenant to have a freehold, as if I were to give land to you until I come from St. James.—And in this plea the point was touched as to the case where a husband and wife hold for term of life, and the husband surrenders to the lessor; some say that she will have a *Cui in vita*, others that she will have an assise.—*Quære*.—*HILLARY*. It seems that in this case the rent reserved for a certain term can not be a freehold, nor shall he ever have an assise for that.—*Thorpe* denied this.—*HILLARY* said further that livery could not be given of a term which stood in the place of a chattel.—*Thorpe*. We have seen the contrary adjudged.—*HILLARY*. You will hardly have such a judgment before us.—And afterwards, because the Sheriff had not served the writ, an *Alias* writ was awarded, and the Sheriff was amerced.—Therefore *Quære*.

## . No. 20.

cs. par an.—*Thorpe*. Le Vicounte ne sciet si ceo A.D. 1341. soit chatel ou frank tenement la rente reserve. Mes pur vous mover, vous dioms qe cest frank tenement, qar la tenant en la terre ad frank tenement, et rente est reserve pur tout le temps qil tendra, issi, qe auxi haut estat ad le lessour en la rente come le tenant en la terre; par quei nous prioms execucion; et tout soient les rentes divers de bledz et de deners a divers temps, uncore tout est un frank tenement, et seisine de lun doune lassise par ley<sup>1</sup> dautre.—*BASSET*. En le bledz il ny ad forsque terme daunz, et donques apres est il a la volunte le tenant sil tendra la terre ou noun, et sil ne teigne forsque pur le terme, donques nest ceo forsque chatel; donques de faire agard et execucion en certain de chose qest en noun certain la ley ne soeffre pas.—*Thorpe*. Issi est de chescun tenant a terme de vie, qar il poet rendre a sa volunte suys son estat a son lessour; mes en ceo cas, pur la noun certeinte, vous ajuggerez le tenant aver frank tenement, come si jeo doune terre a vous tanqe jeo<sup>2</sup> veigne de Saint Jak.—Et en ceo plee est touche qe baroun et sa femme qe tenent<sup>3</sup> a terme de vie, le baroun rend suys al lessour; ascuns gens diount qele avera *Cui in vita*, et ascuns qe assise.—*Quære*.—*HILL*. Il semble qen ceo cas la rente reserve pur certain terme ne poet estre frank tenement, ne il navera jammes assise de cele.—*Thorpe* le dedit.—*HILL*. dit outre qe terme ne serra pas livere en lieu de chatel.—*Thorpe*. Le revers avoms vew par jugement.—*HILL*. A peine qe vous laverez<sup>4</sup> devant nous.—Et puis, pur ceo qe le Vicounte navoit pas servy le bref, fust agarde *Sicut alias*, et le Vicounte amercie.—*Ideo quære*.

<sup>1</sup> ley is not in L.<sup>2</sup> jeo is not in L.<sup>3</sup> L., teignent.<sup>4</sup> L., liveres.

## Nos. 21-23.

A.D. 1341. (21.) § *Pole*. We tell you that the Prior of Little  
*Per quas* Salverne,<sup>1</sup> whose services are granted, held of our cog-  
*servitia* nisor a moiety of the manor by homage, fealty, and  
 the service of half a knight's fee and ten marks by  
 the year, &c.

*Dower*. (22.) § *Dower*, where it was pleaded, in bar of the  
 action, that the demandant's husband was outlawed  
 for felony, in an Oyer and Terminer, in a certain year.  
 —*Thorpe* produced the King's charter of pardon of a  
 later date, and said that her husband was since seised,  
 so that he could endow her.—*Blaik*. Shew how; for  
 if he was seised before the outlawry, and so continued  
 after that time until the King pardoned him, still  
 by that seisin, inasmuch as all that tenancy would  
 be forfeited, the wife shall not have dower; where-  
 fore she must shew some other seisin.—*HILLARY*.  
 Perhaps she will be endowed in the circumstances  
 you speak of; and you know well that a woman  
 shall not show her husband's title; for if he were  
 afterwards seised by disseisin she would be endowed.  
 —*Blaik*. He was not seised after the date contained  
 in the King's charter; ready, &c.—And the other side  
 said the contrary.

*Dower*. (23.) § *Dower*. The two sons were vouched as  
 heirs, that is to say—the elder, whose body was in  
 the wardship of one A., as guardian *de facto*, and  
 part of whose lands were in the wardship of the

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<sup>1</sup> See Y.B., Easter, 14 Edw. 3, No. 27, p. 72, note <sup>1</sup>.

Nos. 21-23.

(21.)<sup>1</sup> § *Pole*. Nous vous dioms qe le Priour de A.D. 1341.  
Petit Salverne, qi services sont grauntes, tient de Per quæ  
nostre conisour la moite du manoir par homage, [Fitz.  
feaute, et demi fee de chivaler, et x. marcz par an, *Par Que*  
&c.<sup>2</sup> [Fitz.  
Servic.,  
7.]

(22.)<sup>1</sup> § *Dower*, ou fust plede, en barre daccion, qe Dower.  
son baroun fust utlage en un oier et terminer pur [Fitz.  
felonie certain an.—*Thorpe* moustra avant<sup>3</sup> la chartre Dower,  
du Roi de pardoun de puisne temps, et dit qe puis 68.]  
son baroun fust seisi, si qe dower la<sup>4</sup> poet.—*Blayk*.  
Moustrez coment; qar sil fust seisi avant lutlagerie,  
et continua tanqe apres cel temps qe le Roi le perdona,  
uncore de cele seisine, pur ceo qe tout<sup>5</sup> cele tenance  
serreit forfait, navera pas la femme dower; par quei  
il covient moustrer autre seisine.—*HILL*. Par cas  
ele serra dowe ou vous parles; et vous savez bien qe  
femme ne moustre pas le tittle son baroun; qar<sup>6</sup> sil  
fust seisi puis par disseisine ele serreit dowe.—*Blak*.  
Qil ne fust pas seisi puis la date compris en la  
chartre le Roi; prest, &c.—*Et alii e contra*.

(23.)<sup>7</sup> § *Dower*. Les ij. fitz come heirs furent Dower.  
vouches, saver—leisne, qi corps est en la garde un A. [Fitz.  
come gardein du fet, et partie de ses terre en la 22.] *Voucher*,

<sup>1</sup> From T. and L.

<sup>2</sup> This report, being in both MSS. merely a repetition in the same form of that which appears Y.B., Easter, 14 E. 3, No. 27, has not been printed *in extenso*. The report in Fitz., noted in the margin, seems to be a different report of the same case.

<sup>3</sup> avant is not in T.

<sup>4</sup> T., nous.

<sup>5</sup> L., qil tynt, instead of qe tout.

<sup>6</sup> qar is not in L.

<sup>7</sup> From T., L., and 16,560.

The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 269. It there appears that the action was brought by William de Belesby, knight, and Joan his wife, against John Reyner, of Grimsby, clerk, and Edmund his brother. The tenants vouched to warranty William and John, sons and heirs of Walter de Stalyngburgh, knight, who were under age,—“videlicet prædictum Willel-  
“mum ut filium antenatum et he-  
“redem, &c., ratione terrarum et



## Nos. 24, 25.

A.D. 1341. same A., by reason of nurture, and part of whose lands holden in Knight service were in the wardship of J. de Orby, as guardian *de jure*—and the younger son, whose body and lands were by reason of nurture in the wardship of B., and who was heir because the lands were of the soke of D., which descend by custom to the youngest son.—And he produced a specialty.

Error. (24.) § Note that the Prior of Austin Friars sued a writ of Error in the King's Bench, in respect of an assise of Fresh Force, against the Master of the Scholars of Oxford, and exception was taken to the warrant of attorney, because he had no warrant on this writ, but his warrant was on another writ of Error which was abated for variance.—*Pole*. This warrant ought to suffice until error be found.—And then he was nonsuited.

Avowry for *Merchetum*, as appears below, and this well. (25.) § Avowry on heirs male, because they held of the avowant by certain services and by *merchetum*, that is to say, that when a daughter or sister of the tenant committed fornication, or was married without

“ tenementorum, &c., quæ tenen-  
 “ tur in socagio, et terrarum et te-  
 “ nementorum, &c., quæ tenentur  
 “ per servitium militare, ejus cor-  
 “ pus est in custodia prædictorum  
 “ Willelmi de Belesby et Johanne  
 “ matris ipsius Willelmi, ex dimis-  
 “ sione Johannis de Orreby, de quo  
 “ prædictus Walterus pater, &c.,  
 “ tenuit prædicta tenementa quæ  
 “ tenentur per servitium militare,  
 “ qui custodiam illam eis dimisit,  
 “ &c. Et etiam prædictæ terræ ip-  
 “ sius Willelmi quæ tenentur in  
 “ socagio sunt in custodia prædic-  
 “ torum Willelmi de Belesby et  
 “ Johanne matris, &c., ut propin-

“ quiorum amicorum, &c. Et præ-  
 “ dictæ terræ ipsius Willelmi quæ  
 “ tenentur per servitium militare  
 “ sunt in custodia prædicti Johan-  
 “ nis de Orreby. Et vocat prædic-  
 “ tum Johannem fratrem prædicti  
 “ Willelmi ut filium postnatum et  
 “ heredem prædicti Walteri, ra-  
 “ tione terrarum et tenementorum  
 “ quæ tenentur de soka de Bradele  
 “ de qua tenura secundum consue-  
 “ tudinem sokæ illius filii postnati  
 “ sunt heredes, &c., ejus corpus  
 “ et terræ sunt in custodia prædic-  
 “ torum Willelmi de Belesby et  
 “ Johanne matris, &c., ratione nu-  
 “ triturse, &c. Summoneantur in

Nos. 24, 25.

garde mesme celui A., par resone de nuture, et partie A.D. 1341. de ses terres en chivalere en la garde J. de Orby, gardein de dreit—et le puisne fitz, qi corps et terres sount par resone de nuture en la garde B., et issi heir qe les terres sount de la soke de D., qe descend par usage al fitz puisne.—Et mist avant especialte.

(24.)<sup>1</sup> § *Nota* qe le Priour de Freres Austyns suyst brëf derroure, dun freche force, en Bank le Roi, vers le Mestre des esscolers<sup>2</sup> Doxenforde, et la garrant dattourne fust chalenge, qar il navoit nul garrant en cestui bref, mes son garrant fust a un autre bref derroure qe fust abatu pur variaunce.—*Pole.* Cest garrant deit suffire tanqe errour soit atteynte.—Et puis fust nounsuy.

*Nota:*  
*Errura.*

(25.)<sup>3</sup> § Avowere sur heirs madles, pur ceo qil tyndrent de luy par certains services et par merchet, saver, quant fille ou soere le tenant fist fornicacion,

*Avowere*  
*pur Mer-*  
*chet, ut pa-*  
*tet inferius,*  
*et hoc bene.*

[*Fits.*  
*Aide, 38 ;*  
*Dower,*  
*69.]*

" eodem Comitatu, &c. Ideo prædicti custodes summonentur quod sint hic a die Sancti Hilarii in xv. dies, prece petentium, &c. Et prædicti custodes corporum tunc habeant hic prædictos heredes ad warrantizandum, &c."

<sup>1</sup> From T., L., and 16,560. See No. 20 of Easter Term next preceding, and the Appendix A. at the end of this volume.

<sup>2</sup> The words des esscolers are not in T.

<sup>3</sup> From T., L., and 16,560. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R. 253, d. It there appears that the action of Replevin was brought by Alice, late wife of Robert de Neubotle, of Ketton (Rut-

land), against Thomas de Grenham. He avowed "quia dicit quod quidam Robertus de Neubotle quondam tenuit de quodam Ebulone de Montibus, domino manerii de Ketene, cujus statum ipse Thomas habet, unum mesuagium et unam bovata[m] terræ cum pertinentiis in Ketene, ut de feodo quod vocatur Neubotlefe, per fidelitatem, et servitium duorum solidorum et quatuor denariorum annuatim ad festa Pasche et Sancti Michaelis solvendorum per sequales portiones, et faciendi sectam ad Curiam ipsius Ebulonis de Ketene de tribus septimanis in tres septimanas in Ketene, et per servitium arandi cum una caruca per unum diem, cum præmunitis

## No. 25.

A.D. 1341. the license of the lord, the tenant should pay 5s. 4d.; and because the daughter of the tenant was married, &c., he avowed for 5s. 4d. for *merchetum*.—And exception was taken to the avowry, as appears at the end.—The plaintiff said that she was tenant in dower of the inheritance of the heirs of her husband, and she prayed aid.—*Thorpe*. Our avowry is for rent service, in which case she who is a stranger cannot be a party either to deny or counterplead my services; and if the others of whom she prays aid were to come, they would have no answer other than that which she could give.—*HILLARY*. They will; and that is the reason why she will have aid.—*Thorpe*. Suppose she gave one answer, and the others gave a different answer, the woman's answer would be taken.—*HILLARY*. That is true where they do not join; and, if the others were now in Court, they would join, for they are

“ esset, et sarculandi per unum  
 “ diem in sestate cum uno homine,  
 “ et metendi per unum diem in au-  
 “ tumno cum uno homine, et per  
 “ merchetum, videlicet, cum aliqua  
 “ filiarum vel sororum suarum de-  
 “ sponsata vel fornicata fuerit, sol-  
 “ vendi domino quinque solidos et  
 “ quatuor denarios, de quibus ser-  
 “ vitiis prædictus Ebulo fuit seisi-  
 “ tus per manus prædicti Roberti  
 “ ut per manus veri tenentis sui,  
 “ et ipse et omnes domini manerii  
 “ prædicti seisisi fuerunt, a tem-  
 “ pore quo non extat memoria, de  
 “ omnibus tenentibus suis de feodo  
 “ suo quod dicitur Neubotefe, de  
 “ mercheto quando casus accidebat,  
 “ qui quidem Ebulo de manerio  
 “ prædicto cum pertinentiis feoffa-  
 “ vit Radulfum de Grenham et  
 “ Mabillam uxorem ejus proavum

“ prædicti Thomæ cujus heres,  
 “ &c., tenendo prædictis Radulfo  
 “ et Mabillæ et heredibus de cor-  
 “ poribus ipsorum Radulfi et Ma-  
 “ billæ exeuntibus, qui quidem  
 “ Robertus de Neubotle attornavit  
 “ se prædictis Radulfo et Ma-  
 “ billæ de servitiis prædictis, et de  
 “ ipsis Radulfo et Mabilla descen-  
 “ dit manerium prædictum per for-  
 “ mam, &c., cuidam Petro ut filio  
 “ et heredi eorundem Radulfi et  
 “ Mabillæ, et de ipso Petro des-  
 “ cendit manerium prædictum per  
 “ formam, &c., cuidam Radulfo ut  
 “ filio et heredi, &c., et de ipso  
 “ Radulfo descendit manerium præ-  
 “ dictum, per formam, &c., isti  
 “ Thomæ qui modo advocat ut  
 “ filio et heredi, &c., et de ipso  
 “ Roberto de Neubotle quondam  
 “ tenente prædicti Ebulonis des-

## No. 25.

ou fust espose saunz conge le seignur, qe le tenant A.D. 1341. freit vs. et iiij*d.*; et pur ceo qe la fille le tenant fust espose, &c., il avowa pur vs. iiij*d.* pur merchet.—Et lavowere chalenge *ut patet in fine*.—La pleintife dit qe ele est tenant en dower del heritage les heirs son baroun, et pria eide.—*Thorpe*. Nostre avowere est pur rente service, en quel cas cele qest estraunge ne poet estre partie a dedire ne countrepleder<sup>1</sup> mes services; et si les autres des quex ele prie eide venissent, il naveroint nul respouns autre qele ne purreit doner.—*HILL*. Si averont; et cest la resoun pur quei ele avera eide.—*Thorpe*. Jeo pose qele donasse<sup>2</sup> un respouns, et les autres un autre respons,<sup>3</sup> homme prendreit al respouns la femme.—*HILL*. Cest verite la joynent il point; et si les autres fuissent ore en Court, il se joyndreint, qar il sont menes<sup>4</sup>

" cenderunt prædicta mesuagium  
 " et bovata terræ cuidam Willel-  
 " mo ut filio et heredi, &c., et de  
 " ipso Willelmo descenderunt te-  
 " nementa illa quibusdam Roberto  
 " et Henrico ut filiis et heredibus,  
 " eo quod tenementa illa tenentur  
 " in socagio et sunt partibilia inter  
 " heredes masculos, qui quidem  
 " Henricus de proparte sua feoffa-  
 " vit prædictum Robertum fratrem  
 " suum tenenda sibi et heredibus  
 " suis, &c., et tempore prædicti  
 " Roberti Radulfus de Grenham  
 " pater prædicti Thomæ cujus  
 " heres, &c., fuit seisitus de mer-  
 " cheto per manus prædicti Roberti  
 " pro Mabilla sorore ipsius Roberti,  
 " quæ quidem Mabilla desponsata  
 " fuit cuidam Johanni del Hulle,  
 " et de ipso Roberto exierunt Ro-  
 " bertus, Ricardus, et Willelmus,  
 " quibus tenementa illa descende-  
 " runt ut filiis et heredibus, &c.,  
 " quia prædicta mesuagium et terra

" sunt partibilia inter heredes mas-  
 " culos, &c., et, quia quædam Oliva  
 " filia prædicti Roberti et soror  
 " prædictorum Roberti, Ricardi, et  
 " Willelmi heredum, &c., desponsa-  
 " ta fuit cuidam Roberto del Mor,  
 " advocat ipse captionem prædic-  
 " tam super prædictos Robertum,  
 " Ricardum, et Willelmum heredes,  
 " &c., ut super veros tenentes suos  
 " pro mercheto, in prædicto loco  
 " ut in parcella prædictorum tene-  
 " mentorum in feodo suo sicut ei  
 " bene licuit, &c." Alice plead-  
 " ed that the place of taking was  
 " Hors de son fee." Issue was  
 " joined thereon. There follow on  
 " the roll the award of *Venue*, and  
 " several adjournments, but the re-  
 " sult is not shown.

<sup>1</sup> L., conustre ple de.

<sup>2</sup> L. and 16,560, dona.

<sup>3</sup> respons is not in T.

<sup>4</sup> L., meynes.

## No. 26.

A.D. 1341. mesne between the woman and you.—*Thorpe*. She must plead to issue before she can have aid, for otherwise we should be delayed in vain; for, if she say it is out of our fee, she will not have aid: and if she give a different answer, to which she can not be party, then perchance she will have aid.—*HILLARY*. It is fit that she have aid before pleading to issue, for otherwise you would put her to say that it is out of your fee, when perchance you have distrained within your fee.—*Thorpe*. Let her shew then by whose assignment she is tenant.—*Pole*. By our own assignment; for the heirs of our husband are in our wardship by reason of socage.—*Thorpe*. A woman can not hold in dower unless it be by assignment from some one else or by recovery in a Court of record, and she alleges neither one nor the other; judgment.—*Blayk*. In this case no one could assign dower to her except herself, and if she demanded dower of other land against another, she would be barred, because she could herself take dower *de la plus belle* of the land holden in socage.—*HILLARY*. That is true; in that case it would be adjudged that she should take to herself dower *de la plus belle*, and by that judgment she would be endowed: but now you do not allege any judgment, and she had not any assignment; therefore the freehold is in the heirs; therefore we oust you from the aid.—*Blayk*. *Hors de son fee*; ready, &c.—And the other side said the contrary.

Nuper  
obit  
where vil-  
lenage was  
alleged,  
and, be-  
cause the  
party  
could not  
deny it, he

(26.) § *Nuper obiit* against B., who alleged that he was a villein; judgment of the writ.—*Thorpe*. He has, as a free man, denied the formula of Court and our right, and this is a *Nuper obiit* which does not lie against any other; besides, he and we heretofore brought a writ of Cosinage, on the seisin of our common ancestor, for the same tenements, on which

## No. 26.

entre la femme et vous.—*Thorpe*. Il covient qele A.D. 1341. plede a issu avant qele eit eide, qar autrement nous serroms delaye en veyn; qar si ele die hors de nostre fee, ele navera pas eide; et si ele donne autre respouns a quei ele ne poet estre partie, ele donques par cas avera eide.—*HILL*. Il covient qele eit eide devant, qar autrement vous la mettres a dire hors de vostre fee, ou par cas vous avez destreint deinz vostre fee.—*Thorpe*. Moustre donques de qi assignement ele est tenante.—*Pole*. De nostre assignement demene; qar les heirs nostre baroun sount en nostre garde par resoun de sokage.—*Thorpe*. Femme ne poet tenir en dower sil ne soit par autri assignement ou par recoverir en Court de record, et ele nalegge ne lun ne lautre; jugement.—*Blayk*. En ceo cas nul homme ne la poet assigner dower si lui mesme noun, et si ele demanda dower vers autre dautre terre, ele serreit barre, pur ceo qele purreit pendre mesme de plus bele en sokage.—*HILL*. Cest verite; la<sup>1</sup> serreit agarde qele se prendreit de plus bele, et par cele agarde serra ele dowe; mes ore vous aleggez nul jugement, ne ele navoit nul<sup>2</sup> assignment; par quei le frank tene-ment est en les heirs; par quei nous vous oustoms del eide.—*Blak*. Hors de son fee; prest, &c.—*Et alii e contra*.

(26.)<sup>3</sup> § *Nuper obiit* vers B., qaleggea qil fut *Nuper* vileyn; jugement du bref.—*Thorpe*. Il ad defendu *obiit*, ou<sup>4</sup> villen-les motes de la Court, et nostre dreit, come fraunk, age fut et cest un *Nuper obiit* qe ne gist pas vers autre; pur ceo qe allege, et, ovesqe ceo, autrefoitz il et nous portames bref de la partie ne put cosynage, de la seisine nostre comune auncestre, de dedre, il

<sup>1</sup> L., mes ceo.

<sup>2</sup> T., nature; 16,560, nautre; instead of ne ele navoit nul.

<sup>3</sup> From T., L., and 16,560.

<sup>4</sup> This marginal note, from ou to the end, is from L. alone.

## No. 26.

A.D. 1341. writ he appeared, and the writ abated by the death of the tenant, after whose death he was found tenant; took nothing by his writ, for if one bring a writ against another, and the tenant allege that he is the villein of such a person, and demand judgment of the writ, if the demandant cannot deny it, the writ shall abate, as appears in this plea, &c.

so by employing the writ with us he affirmed his ability and made himself heir to the same ancestor of the same tenements; judgment whether by that exception you can abate our writ.—HILLARY. A villein may be in line of inheritance through his ancestor; wherefore that proves nothing.—*Thorpe*. If he had recovered by the writ of Cosinage, and had put himself in possession without execution, we should have a *Nuper obiit* against him, and he, on account of the acceptance, would not abate the writ by such exception; and the user of the writ is as strong as to this point as the recovery; and if one recover against me by an assise, and I bring Attaint against him, he shall not abate my writ by the exception of villenage: and in the case of other writs, after view demanded, the writ will not abate by such exception, because he has answered as a free man, and it is not reasonable law that the writ should abate without an answer; for one might acknowledge himself to be villein of his cousin or his father and abate the writ, and the next day have a release from him.—HILLARY. True; it is hard, but such is the law.—*Thorpe*. When a writ is abated by the exception of villenage, the writ does not lie against the lord if the villein be not named, where the lord has neither seisin nor entry; for the lord shall not be tenant if he do not wish it.—HILLARY. It is true; and because you can not deny the disability in his person, take nothing by your writ.—And note, that it was said that the demandant and the villein will have a writ of Cosinage against the lord or against any other who shall be found tenant,

No. 26.

mesmes les tenementz, a quel bref il aparust, et le A.D. 1341.  
 bref abatist par mort del tenant, et il trove tenant ne prist  
 apres sa mort; issi par luser<sup>1</sup> del bref ovesqe nous riens par  
 il lui afferma able et coheir a mesme launcestre de soun bref,  
 mesmes les tenementz; jugement si par cele excepcion qar si un  
 puissez nostre bref abatre.—HILL. Vileyn serra homme  
 herite par son auncestre; par quei ceo nest pas prove.— porte un  
*Thorpe.* Sil ust recoveri par le bref de cosynage, et bref devers  
 sanz execucion se ust mys einz, nous averoms *Nuper* un autre, et  
*obiit* vers lui, et il, pur laccepter, nabatra pas le bref le tenant  
 par tiel excepcion; et auxi fort est luser del bref allegge qil  
 quant a cel point come le recoverir<sup>2</sup>; et si homme est vileyn  
 recovere par assise vers moy, et jeo porte latteynte un tiel, et  
 vers lui, il nabatra pas mon bref par excepcion de demande  
 vilenage; et en autres brefs, apres vewe demander, jugement  
 le bref nabatra pas par tiel excepcion, pur ceo qil ad du bref, si  
 respondu come fraunk, et la ley nest pas resonable la partie  
 qe<sup>3</sup> abatra bref saunz respouns; qar homme se<sup>4</sup> dante ne  
 conustra estre le vileyn son cosyn ou son pere et put dedire,  
 abatra bref, et lendemene avera un relees de lui. le bref  
 HILL. Cest verite; il est dure, mes tiel est la ley. abatra, ut  
 —*Thorpe.* Quant bref est abatu par excepcion de vilenage, patet in  
 le bref ne gist pas vers le seignur si le vileyn ne isto placito,  
 soit nome, la ou le seignur nad<sup>5</sup> pas seisine nentre; &c.  
 qar le<sup>6</sup> seignur ne serra pas tenant sil ne voet. [Fitz.  
 HILL. Cest verite; et pur ceo qe vous ne poez dedire *Briefe,*  
 la nounablete en sa persone, pernez rien par vostre 322.]  
 bref.—*Et nota*, qe dit est qe le demandant et le  
 vilein averont bref de cosynage vers le seignur ou  
 autre qe serra trove tenant.

<sup>1</sup> L. and 16,560, le issir.

<sup>2</sup> 16,560, respouns.

<sup>3</sup> T., qil.

<sup>4</sup> 16,560, ne.

<sup>5</sup> L., nest.

<sup>6</sup> L., si.



## No. 27.

A.D. 1341. (27.) § Hugh de Mortimer and M. his wife brought  
Assise of Novel Disseisin. an assise of Novel Disseisin against John de Wodhill.  
And their plaint was that they had been disseised of ten  
acres of meadow and 15s. of rent.—John answered as  
tenant, and alleged that by virtue of a fine he held the  
manor of B., of which the tenements were parcel, jointly  
with his wife; judgment of the writ.—To this it was  
said that, at the time when the fine was levied, a person  
other than any of those who were parties to the fine  
was seised of the same tenements, and so they are not  
parcel of the manor.—And John answered over *gratis*.—  
*Quære* whether it be an issue—parcel or not parcel.—  
And then John prayed aid of the King in respect of  
the tenements as parcel of the manor of B.—And be-  
cause he did not show any specialty from the King, he  
answered over, and pleaded in bar for that one J., his  
great-grandfather, whose heir he is, leased the tenements  
to one M. Passelewé for the term of his life, saving the  
reversion to himself and his heirs, and 1d. of rent, and  
died seised of the reversion and of the rent. From him  
the descent was to T., as son and heir, and T. died  
seised. After T.'s death the King seized, because the  
lands were holden of him; and J., son and heir of T.,  
who was father of the tenant, sued a *Diem clausit  
extremum*, and had livery out of the King's hand,  
and continued and died seised. And, after that J.'s  
death, John, who now answers as tenant, was under  
age, and the King seized, and, while the King was in  
possession, M. the tenant for term of life died, and the  
King seized the reversion; and the possession which  
the plaintiffs had was by abatement on the King's  
possession; and when J. came of full age, on an office  
being served, the King commanded that J. should be  
put in seisin, and therefore he ousted the plaintiffs;  
judgment whether on the possession by abatement on  
the King's seisin they ought to have an assise.—The

## No. 27.

(27.)<sup>1</sup> § Hugh de Mortimer et M. sa femme por-  
 terent un assise de novele disseisine vers Johan de Wodhill. Et lour<sup>2</sup> pleint estre disseisi de x. acres de pree et xvs. de rente.—Johan respondi come tenant, et alleggea par fyne<sup>3</sup> coment il tient le manoir de B., dont les tenementz sont parcele, joint ove sa femme; jugement du bref.—A qi fust dit qe au temps quant la fyne se leva, un autre qe nul deux qe furent partie a la fyne fust seisi<sup>4</sup> de mesmes les tenementz, et issi ne sont il pas parcelle du manoir.—Et Johan de gree respondi outre.—*Quære* sil soit issu—parcele ou nient parcele.—Et puis il pria eide du Roi des tenementz come parcele del manoir de B.—Et pur ceo qil ne moustra nule especialte du Roi, il dit outre, et pleda en barre pur ceo qun Johan, son besael, qi heir il est, lessa les tenementz a un M. Passelewe a terme de sa vie, sauvant la reversion a lui et a ses heirs, et<sup>5</sup> un denier de rente, et morust seisi de la reversion et de la rente; de qi descendi, &c., a T., come a fitz et heir, et morust seisi, apres qi mort le Roi seisisit pur ceo qe les terres furent tenuz de lui; et J., fitz et heir T., qe fust pere le tenant, suyst *Diem clausit extremum*, et avoit la livere hors de la mayn le Roi, et continua et morust seisi, apres qi mort J. qore respond come tenant fust deinz age, et le Roi seisisit, et, esteant le Roi en possession, M. tenant a terme de vie morust, et le Roi seisisit la reversion; et la possession qe les pleintifs eurent ceo fust par abatement sur la possession le Roi; et a son plein age, par office servy, le Roi comanda de mettre J. en seisine, par quei il ousta les pleintifs; jugement si sour<sup>6</sup> la possession par abatement sur la seisine le Roi deivent

<sup>1</sup> From T., L., and 16,560.

<sup>2</sup> T. and 16,560, se.

<sup>3</sup> The words par fyne are not in L.

<sup>4</sup> L. and 16,560, seignour.

<sup>5</sup> et is in T. alone.

<sup>6</sup> T., de.

## No. 27.

A.D. 1341. plaintiffs said that they did not admit the lease made by his great-grandfather, nor what he pleaded in bar; and they said that in the lifetime of the father of John, who now answers as tenant, and when he was of full age, Henry le Scrope was seised of the same tenements in his demesne as of fee, and continued that estate until he enfeoffed P. de R., and P. continued that estate until by fine he rendered the tenements to Henry le Scrope for his life, with remainder to W. le Scrope, &c.; and Henry, by virtue of the fine, continued and died seised. And the King, understanding that Henry had a fee, seized, and then W. Scrope sued the tenements out of the King's hands, and afterwards assigned the same tenements to the present plaintiff M., who was the wife of Henry Scrope, to hold in name of dower, and she continued that estate until she took Hugh to husband, and they continued that estate until they were disseised; and (said the plaintiffs) we pray the assise.—*Pole*. They do not show how Henry Scrope, the first husband of M., obtained the reversion by a rightful title; and they have not denied the lease made by our great-grandfather and the reversion saved to him and his heirs; and as to their statement that H. Scrope was seised, &c., all that might be during our nonage, in which case the King would be bound to make restitution to us, &c.—*Thorpe*. The reversion is the cause of your bar, and that we have destroyed, and discontinued in you and in your father; and we have nothing to do with the manner in which our husband came to the tenements; for when Henry, our first husband, was seised, and afterwards divested himself and took back an estate, as above, it would be impossible that the reversion should be continued.—And it was said that even when tenant for life is disseised, the reversion for the time is discontinued, and he to whom the reversion belongs will not have an assise

## No. 27.

assise aver.—Les pleintifs disoynt qil ne conisent pas A.D. 1341. le lees fet par son besael, ne ceo qil pleda en barre; et disoient qen la vie le pere J., qore respond come tenant, et quant il fust de pleine age, Henre le Scrope fust seisi de mesmes les tenementz en son demene come de fee, et cel estat continua tanqil feffa P. de R., et P. cel estat continua tanqe par fyne il rendi les tenementz a Henre le Scrope pur sa vie, la remeindre a W. le Scrope, &c.; et H., par la fyne, continua et morust seisi. Et le Roi, entendant H. avoir fee,<sup>1</sup> seisisit, et puis W. Scrope suyst hors de la mayn le Roi, et puis assigna a M., qore se plainte, qe fust la femme Henre Scrope,<sup>2</sup> mesmes les tenementz, a tenir en noun de dower, et ele cel estat continua tanqe ele prist baroun Hughe, et ceux cel estat continuerent tanqe disseisi, &c.; et prioms lassise.—*Pole.* Ils ne moustrent pas coment Henre Scrope, primer baroun M., avient par tittle de dreit a la reversion; et le les fait par<sup>3</sup> nostre besael et la reversion saufve en lui et ses heirs nont ils pas dedit; et ceo qil parlent qe H. Scrope fust seisi, &c., tout cel purreit estre durant nostre noun age, en quel cas le Roi fust tenuz de nous faire restitution, &c.—*Thorpe.* La reversion est cause de vostre barre, et ceo nous avoms destruit, et discontinue en vous et en<sup>4</sup> vostre pere; et a la manere coment nostre baroun avient navoms qe faire; qar quant Henre, nostre primer baroun, fust seisi, et puis se demist et reprist estat, *ut supra*, il serreit impossible qe la reversion fust continue.—Et fust parle qe mesqe tenant a terme de vie soit<sup>5</sup> disseisi, la reversion pur le temps est discontinue, et qe celui a qi la reversion appent navera pas assise de la rente navowere,

<sup>1</sup> T., &c., instead of H. avoir fee.

<sup>2</sup> Scrope is in T. alone.

<sup>3</sup> T., a.

<sup>4</sup> en is in 16,560 alone.

<sup>5</sup> L., ne soit.

Nos. 28-30.

A.D. 1841. or avowry for the rent, for *Hors de son fee* will be pleaded.—Afterwards the assise was awarded by the opinion of all the JUSTICES.

Debt,  
for execu-  
tors, where  
it was said  
that one  
shall be  
barred by  
the release  
of an  
executor  
named in  
the testa-  
ment in a  
case in  
which he  
has never  
accepted  
adminis-  
tration, as  
appears in  
this plea,  
&c.

(28.) § Executors brought a writ of Debt, and produced the testament, in which several others were named besides those named in the writ.—*Lincoln*. Judgment of the writ, for more are named in the testament than in the writ.—*Derworthy*. The others who are not named in the writ refused to administer, wherefore the Ordinary has committed the administration to those who are named in the writ, and thus they are the executors, and the others are not; and the law does not require that the latter should be named in the writ, or that their release should bar us of our action.—*HILLARY*. It will do so; and because they are not named in the writ the COURT adjudges that you take nothing.

Fine.

(29.) § Note that, by a fine, land was granted so that one T. should hold for the term of his life, and that his executors should hold for two years afterwards, and that after his death and the expiration of the two years, &c., the land should remain to a grantee for his life, to hold of the grantor by the service of a rose yearly, and performing to the chief lord, for him, the services due, and that after the decease of the grantee the land should return to the grantor and his heirs.

Debt.

(30.) § Debt. The plaintiff counted that there was agreement between the plaintiff and the defendant that the plaintiff should be retained for him in a

Nos. 28-30.

qar homme pledra<sup>1</sup> Hors de son fee.—Puis lassise est A.D. 1341.  
 agarde par avis de touz les JUSTICES.<sup>2</sup>

(28.)<sup>3</sup> § Executours porterent bref de dette, et Dette, mounstrerount avant testament, en quel plusours pur execu- furent nomes qen le bref.—*Lincoln*. Jugement du tours, ou bref, qar plusours sont nomes el testament qen le fuit dit qe bref.—*Derworth*. Les autres qe ne sont pas nomes el homme serra barre par le re- le bref<sup>4</sup> refuserent administracion, par quei lordener leales le exe- ad comis ladministracion a eux<sup>5</sup> qe sont nomes el cutour qe fust nome en le testa- bref, issi sont ils<sup>7</sup> executours, et les autres nient; ment la ou et ley ne voet pas ceux soient nomes,<sup>8</sup> ne qe lour il ne re- relees nous barre del accion.—*HILL*. Si fra; et pur ceust unqes ceo qils ne sont pas nomes si agarde la COURT qe laministra- vous ne preignes rienz. cion, ut patet in isto placito, &c.<sup>4</sup>

[Fitz.  
*Execu-  
 tours*, 80  
 and 90.]

(29.)<sup>3</sup> *Nota* qe, par fyne, terre fust graunte qe un Finis. T. tient a terme de sa vie, et ij. aunz outre qe ses exe- [Fitz. cutours tendrunt, et qe apres son decees et les ij. aunz *Fynes*, 50.] passez, &c., remeigne al graunte pur sa vie, a tenir del grantour par une rose par an, et fesaunt al chief seigneur, pur lui, les services dues, et apres le decees le grante retourne al grantour et a ses heires.

(30.)<sup>3</sup> § Dette. Il conta qil a covyent entre le Dette. pleintif et le defendant qe le pleintif demoreit ovesqe

<sup>1</sup> L., *dirra*; the word is omitted from 16,560.

<sup>2</sup> The words *par avis de tous les JUSTICES* are in T. alone.

<sup>3</sup> From T., L., and 16,560.

<sup>4</sup> Of the marginal note only the word *Dette* occurs in T., and only

the words *Dette pur executours* in 16,560.

<sup>5</sup> The words *en le bref* are not in T.

<sup>6</sup> T., *ses*.

<sup>7</sup> The word *ils* is not in T.

<sup>8</sup> The word *nomes* is not in 16,560.

## Nos. 31, 32.

A.D. 1341. in a writ of entry returnable at a certain day, &c., the defendant paying one mark by the year and also four marks for serjeanty; and he said that this was in arrear for three years, and therefore he prayed his payment, &c., and he did not count that he made any payment to serjeants, &c., and no exception was taken on that point, but *Rokell* joined issue that the defendant owed the plaintiff nothing; ready, &c.—And the other side said the contrary.

*Quare non  
admisit.*

(31.) § Note that the King recovered by a *Quare impedit*; and the Bishop of Lincoln, in whose diocese the church is, did not admit; and *Thorpe* came and prayed a *Quare non admisit* against the Archbishop of Canterbury, Guardian of the Spiritualities.—HIL-LARY. We will grant you a *Quare non admisit* against the Guardian of the Spiritualities, but not against the Archbishop, because the first writ was not directed to him.

*Contempt.*

(32.) § The King brought his writ of Contempt in the Common Bench against the Prior of Merton for that he did not admit one N. de la Garderobe to a certain corody and sustenance in his Priory at the King's command, according as others were admitted into the same House on the command of the King's progenitors. And the count for the King was that an *Alias* and a *Pluries vel causam* came to the Prior, requiring him to be in the King's Bench to show wherefore, &c., and that he, in contempt of the commands, did nothing thereon, nor did he signify any

## Nos. 31, 32.

lui en un bref dentre retournable a certain jour, &c., A.D. 1341. paiaunt un mark<sup>1</sup> par an et auxi de iiij. mars par an pur serjantie; et dit qe ceo fust arere par iij. aunz, par quei il pria sa paie, &c.; et il ne conta pas qil paia as serjantz, &c., ne ceo nest pas chalange, mes *Rokel* joynt lissu qe rien ne lui deit<sup>2</sup>; prest, &c.—*Et alii e contra*.

(31.)<sup>3</sup> § *Nota* qe le Roi recoveri par *Quare impedit*; Quare non  
et levesqe de Nicole, en qi diocese leglise<sup>4</sup> est, ne admisit.  
resceut pas; et *Thorpe* vient et pria *Quare non admisit* [Fitz.  
vers Lercevesqe de Cantorberie, gardein de spiritualtes. *Quare non*  
—HILL. Nous vous graunteroms *Quare non admisit* admisit,  
vers le gardein de spiritualtes, mes noun pas vers 5.]  
Lercevesqe, qar le primer bref ne fust pas direct a  
lui.

(32.)<sup>5</sup> § Le Roi porta soun bref de contempt en Contempt.  
Comune Bank vers le Priour de Mertoun de ceo qe il ne [Fitz.  
resceut un N. de la Gardrobe a certain conray et sus- Corodie,  
tenance en sa Priorie a son mandement, solonc ceo 4.]  
qautres al mandement de ses progenitors furent resceuz  
en mesme la mesoun. Et conta qe *Sicut alias* et  
*Pluries vel causam* lui vynt, et qil serreit en Bank  
le Roi a moustrer pur quei, &c., et il, despisaunt les  
mandementz, rien en ad fait, ne cause signifie, &c.—

<sup>1</sup> T., v. marcs, instead of un mark.

<sup>2</sup> L., dit.

<sup>3</sup> From T., L., and 16,560.

<sup>4</sup> L., il; the word is omitted from 16,560.

<sup>5</sup> From T., L., and 16,560. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 204. It there appears that the Prior of Merton was attached to answer the King, wherefore (when the King, desiring to pro-

vide fitting sustenance for Bartholomew de Langele, who had long and faithfully served him, "eisdem  
" Priori et Conventui rogaverit  
" quatenus ipsum Bartholomeum  
" in domum suam admitterent, et  
" ei talem sustentationem in omni-  
" bus . . . . . qualem Nicho-  
" laus de la Garderobe defunctus,  
" dum vixit, ad rogatum domini  
" Edwardi nuper Regis Anglie, avi  
" domini Regis nunc, habuit in ea-  
" dem concederent") the Prior and



## No. 32.

A.D. 1341. cause, &c.—*Pole*. The King takes his suit of matter brought in a higher place, and we do not understand that he will put us to answer in this place, which is lower.—This objection was not allowed, because the King can take his suit where he pleases.—*Pole*. The King does not base his declaration on a title of right, such as prescription, nor by reason of foundation; judgment whether to such a declaration, &c.—*HILLARY*. That will come by way of answer.—*Pole*. We tell you that whereas the King counts that W. was admitted, &c., he was admitted by favour, at the prayer of the King; and we tell you that he received, at the prayer of the King, only certain loaves and ale, and the rest that he received he had by bargain and by his own purchase; and we tell you that we hold in frankalmoign, and we do not understand that the King will, without the ground of foundation, rightfully charge us in this case.—*Thorpe*. The quantity which the King's servant received is not now in contention; but

Convent "spretis mandatis Regis" had made no answer, in contempt of the King. It appears by the count that the "sustentatio" included "unam cameram competentem cum stabulo pro duobus equis," every day throughout the year "sex panes de prædicto Prioratu qui vocantur *Miches*, et tres panes qui vocantur *bys*, sex lagenas cervisie conventualis, duo fercula conventualia potagii, et quolibet die carniū duo fercula conventualia carniū, et quolibet die piscium duo fercula conventualia piscium, et quolibet die carniū duo fercula conventualia carniū pro cœna ejusdem Bartholomæi, et quolibet die piscium quo non contingit ipsum Bartholomæum jejunare, duo fercula conventualia

"piscium, et quolibet die sex canelas cereas pro camera sua, quolibet die unum bussellum avenæ pro duobus equis suis, duodecim carectatas fœni pro equis suis quolibet anno, et sex carectatas straminis pro camera sua, duodecim carectatas buscæ pro focali, &c., quolibet anno unam robam pro se ipso de secta armigerorum ipsius Prioris, unam robam pro garcione sua de secta garcionum ejusdem Prioris, et viginti solidos quolibet anno pro calciamentis et aliis necessariis, &c." The delivery of the King's letters containing the "rogatum" by the King's sergeant-at-arms before certain witnesses is stated in the count, also that of subsequent letters, also of a writ requiring the

## No. 32.

*Pole.* Le Roi prent sa suyte de chose attame en A.D. 1341. place pluis haut, et nentendoms pas qil voille en ceste place, plus bas, mettre nous a respoudre. — *Non allocatur*, qar le Roi prendra sa suyte ou il lui plerra. — *Pole.* Le Roi ne fond pas sa moustraunce par title de dreit, come par prescripcion, ne par cause de fundacion; judgment si a tiel moustraunce,<sup>1</sup> &c.—*HILL.* Ceo vendra par voie<sup>2</sup> de respouns.—*Pole.* Nous vous dioms qe la ou le Roi conte qe W. fust resceu, &c., nous vous dioms qil fust resceu, a la priere le Roi, de grace; et vous dioms qil ne resceut a la priere le Roi forsque certains payns et servoise, et le remenant qil resceut il avoit par bargayn de son achat<sup>3</sup>; et vous dioms qe nous tenoms en pure almoigne, et nentendoms pas qe le Roi, saunz pee de foundacioun, de dreit nous voille en ceo cas charger.—*Thorpe.* La quantite qe le serjeant<sup>4</sup> le Roi resceut ne chiet pas ore en

Prior to do as desired or appear in the King's Bench on a day fixed. Nevertheless the Prior and Convent would not do what was asked, and made no return to the writ "in Regis ac mandatorum suorum contemptum manifestum et ad damnum ipsius domini Regis mille librarum. Et hoc [Clone who prosecuted for the King] paratus est verificare pro domino Rege." The Prior pleaded that he held the Priory in frankalmoign, that Nicholas did not have the corody "in jure domini Regis avi," but "ex speciali et precatorio rogatu ejusdem Regis," and that it was not of the amount stated, being only "unum panem qui dicitur *Micha*." . . . Et "omnia alia necessaria que habuit in eodem Prioratu fuerunt pro bono servitio suo et pro denariis

" suis, &c., et non in jure Regis, " &c., unde dicit quod ipse non intendit quod dominus Rex ad istud breve in hoc casu responderi vellet, &c." It is unnecessary to quote the roll as to Thorpe's replication or as to Pole's rejoinder. The charters are mentioned, and their purport stated in the roll, but they are not given *in extenso*. Thorpe's surrejoinder is in accordance with the roll, where, however, it appears at greater length. Thence to the end of the report is argument, which, of course, does not appear in the record. There were numerous adjournments, according to the roll, but no result appears.

<sup>1</sup> T., demoustrance.

<sup>2</sup> 16,560, vei.

<sup>3</sup> L. and 16,560, acate.

<sup>4</sup> L., servant.

## No. 32.

A.D. 1341. inasmuch as they have admitted the King's possession, which can be understood only as being by a rightful title, since there is not any other shown, and we tell you that the House is of the King's foundation, and thus they are his tenants, and possession of services is sufficient as between lord and tenants, therefore we pray judgment for the King.—*Pole* then showed charters from Kings to the effect that they held in frankalmoign, quit of all services, and demanded judgment, as above.—*Thorpe*. You shall not be admitted to aid yourself by charters, since you did not employ them at first.—*Pole*. We did not at first see by what cause you charged us, but afterwards, since you said that we are of your foundation, and so attempted to charge us, we show that this can not charge us, and we show it by the deeds of Kings which discharge us.—*HILLARY*. If this were rent service due by the King's tenant, he ought to distrain, and not proceed by such a suit as this.—*Thorpe*. He will elect; and when the King is seised by the hand of his tenant, the charge will remain until he be discharged by means of petition, which is in lieu of suit, for the King shall not be in a worse condition than any other lord with respect to his tenant; and even if it were the fact that he could aid himself by the charters of Kings, still it is proved by the charters only that he holds the vill of Merton in alms; but we say always that he has overstayed the time for aiding himself by specialties.—*Pole*. The Abbot of Colchester, notwithstanding the seisin of Kings, by three servants admitted at the request of Kings, was, in a like case, because the House held in frankalmoign, and the King was not rightfully entitled by foundation, discharged by judgment in the King's

## No. 32.

debat; mes desicome ils ount conu la possession le A.D. 1341.  
 Roi, qe ne poet estre entendu forsque par tittle de  
 dreit, del houre qautre nest il pas moustre, et nous  
 vous dioms qil sont de la fundacion le Roi, et issi  
 ses tenantz, et possession des services suffist entre  
 seignur et tenantz, par quei jugement pur le Roi.  
 —*Pole* moustra<sup>1</sup> donques chartres des Rois qils teignent  
 en fraunk almoigne quites de touz services, et demanda  
 jugement, *ut supra*.—*Thorpe*. A ceo ne serrez resceu  
 de vous eider par chartres, del houre qe primes ne  
 les usastes par.—*Pole*. Primes ne veuames<sup>2</sup> par quele  
 cause vous nous chargeastes, mes puis, quant vous  
 deistes qe nous sumes de vostre fundacion, et issi de  
 nous charger, nous moustroms qe ceo ne nous poet  
 charger, et ceo par les fetes des Rois qe nous des-  
 chargent.—*HILL*. Si ceo serroit rente service due par  
 le tenant le Roi, il duist destreindre, et noun pas estre  
 a tiel suyte.—*Thorpe*. Il eslirra; et quant le Roi  
 est seisi par la mayne son tenant, la charge demura  
 tanqil soit descharge par voie de supplicacion, qest  
 en lieu de suyte, qar le Roi ne serra pas de pire  
 condicion qautre seignur vers son tenant; et tout  
 fust ceo qil purreit soi eider par les chartres les Rois,  
 uncore nest pas prove par les chartres qil tient forsque  
 la ville de Mertoun en almoigne; mes nous dioms  
 touz jours qil ad sursis son temps de soi eider par  
 especialtes.—*Pole*. Labbe de Colchestre, *non obstante*  
 seisine des Rois, de iij. valetz resceuz a request  
 des Rois, pur ceo qil tiendrent en fraunk almoigne, et  
 le Roi navoit pas foundement de dreit, fust descharge  
 en tiel cas par jugement en Bank le Roi anno xiiij<sup>o</sup>;

<sup>1</sup> L., moustres.| <sup>2</sup> L., veiames; T., savams.

## Nos. 33-35.

A.D. 1341. Bench in the 14th year<sup>1</sup>;—(but note that he was not the King's tenant),—and so was the Prior of Barnwell.

Fine. (33.) § Note that upon a writ of Covenant against two men and their wives by Simon Simeon, they released all their right, and bound themselves and their heirs to warranty, notwithstanding that such a fine used not to be admitted unless the wives were found upon examination to be parceners.—*Quære*.

Replevin. (34.) § Note that, in a Replevin, the plaintiff counted that the defendant was in possession, and, after avowry, prayed that he might wage the deliverance.—*Blaik*. The deliverance was made in the country; wherefore we will will not wage.—*HILLARY*. That can not be tried between you by inquest; wherefore, do you, plaintiff, sue a writ to the Sheriff to have the deliverance in case it be not made.

Debt. (35.) § Debt, brought against W. Vaghan, Knight, for seven marks on an obligation made.—*Thorpe*. We tell you that there was an agreement between us and the plaintiff, who granted, by this deed, that if he should cause us to have from one J., chief executor of W. Hameldone, a release of all manner of actions of debt, and on Statute Merchant, and on recognisance (which release would excuse us from all such actions in relation to the executors, &c.), then we should be bound to him in seven marks, and if not, then that we should be quit of the seven marks; and we do not understand that until this point be tried, viz, whether the release can avail or not, you will in the meantime put us to answer.

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<sup>1</sup> Y. B., Trin., 14 E. 3, No. 46. See note, p. 314.

## Nos. 33-35.

—*sed nota* qil nest pas tenant le Roi,—et le Priour A.D. 1341. de Bernewelle auxi.—*Adjournantur*.<sup>1</sup>

(33.)<sup>2</sup> § *Nota* qe sur bref de covenant vers ij. Finis. hommes et lour femmes par Symound Simeon,<sup>3</sup> qil [Fitz. Fynes, 51.] releaserent<sup>4</sup> tout lour dreit, et obligerent eux et lour heirs a la garrantie, *non obstante* qe tiele fyne ne soleit pas estre resceu<sup>5</sup> sil ne fuissent trovez<sup>6</sup> par-ceners par examinement.—*Quære*.

(34.)<sup>3</sup> § *Nota* qen *Replegiari*, le pleintif conta qe *Replegiari*. le defendant fust seisi, et apres avowere pria qil [Fitz. Gage De-liverauns, 4.] gageast la deliverance.—*Blak*.<sup>7</sup> La deliverance se fist en pais, par quei nous gageroms pas.—HILL. Homme ne poet trier cele entre vous par enquest; par quei vous, pleintif, suez bref a Vicounte daver la deliveraunce en cas gele ne soit pas fait.

(35.)<sup>2</sup> § Dette, porte vers W. Vaghan, chivaler,<sup>8</sup> de Dette. vij.<sup>9</sup> marcz par obligacion fait<sup>10</sup>.—*Thorpe*. Nous vous dioms qil ad convynt<sup>11</sup> entre nous et le pleintif, qe graunta, par ceo fet, qe sil nous fait aver dun<sup>12</sup> J., chief executour W. Hameldone, un reles de touz maneres daccions de dette, et statut marchant, et reconisance, quel relees nous excuseroit de touz tiels accions vers les executours, &c., qadonques nous lui serroms tenuz en vij. marcz, et si ceo noun, qe nous serroms quites de les vij.<sup>13</sup> marcz; et nentendoms pas qe tanqe cest point soit trie, si le relees purra valer ou noun, qen le mene temps nous voillez mettre a respondre.

<sup>1</sup> The word *Adjournantur* is not in T.

<sup>2</sup> From T., L., and 16,560.

<sup>3</sup> T., Symyon; L., Symeon.

<sup>4</sup> L., lesserent.

<sup>5</sup> resceu is not in L.

<sup>6</sup> trovez is not in L.

<sup>7</sup> T. and 16,560, BAUX.

<sup>8</sup> chivaler is in T. alone.

<sup>9</sup> 16,560, xiiij.; T., xiiij.

<sup>10</sup> fait is not in T.

<sup>11</sup> T., acovient; 16,560, acompt.

<sup>12</sup> 16,560, dit.

<sup>13</sup> 16,560, xiiij.; T., xiiij.

## No. 36.

A.D. 1341.

Dower.

Note

touching  
dower de-  
manded by  
a woman,  
where it  
was alleged  
by the  
tenant that  
her hus-  
band had  
not entry  
but by dis-  
seisin, and  
the woman  
said that  
the dissei-  
see re-  
leased to  
her hus-  
band all  
the estate  
that he had  
in the same  
land, dur-  
ing the  
disseisin,  
and she  
demanded  
judgment  
whether  
she ought  
not to have  
dower.

And the  
other fully  
admitted  
the release,  
but he said  
that, at the  
time at  
which the  
release was  
made, he  
was im-  
prisoned at  
such a  
place, and

(36.) § Margery, who was the wife of John de Chesterton,<sup>1</sup> brought a writ of Dower against William de Bukmynster,<sup>2</sup> Knight.—*Derworthy*. You ought not to have dower; for we brought a writ of Entry *sur disseisin* against John, your husband, supposing that he had not entry but by John de Neville who disseised us; process was continued until we recovered; judgment whether of the estate of your husband which was so defeated you ought to have dower.—And he was put to show by what judgment; and he said that it was by default.—*Thorpe*. The Statute<sup>3</sup> which gives the process requires that he should show his right, and that he does not; judgment.—And it was said by the COURT that he must show his right, and also that he must aver the first writ.—And the right was shown.—*Thorpe*, as to parcel, said that John de Neville did not disseise, and, as to the rest, that he who brought the writ of Entry released all his right, by this deed, to John de Neville,<sup>4</sup> by whom the entry of our husband was supposed, and so his action was extinguished, and thus he recovered upon a false title; judgment whether by such a recovery you can bar her of dower.—*Derworthy*. As to his traverse of the disseisin, ready, &c., to aver the disseisin; and as to the release, we tell you that he to whom the release was made (John de Neville), took us at Wellingborough,<sup>5</sup> and brought us to Somerton Castle, and there imprisoned us, and by duress of imprisonment compelled us to make the deed; judgment whether in virtue of such a deed you can affirm the estate of her husband.—*Blaik*. We tell you that

<sup>1</sup> Of Grantham, as appears by the record.

<sup>2</sup> The name so appears in the record.

<sup>3</sup> 13 Edw. I. (Westm. 2), c. 4.

<sup>4</sup> Whose estate the husband had, according to the record.

<sup>5</sup> Wyllyngburgh in the record.

No. 36.

(36.)<sup>1</sup> § Margerie, qe fut la femme Johan de Chester-  
tone, porta bref de dower vers W. Bukmynstre, chivaler.  
—*Derworthy*. Dower ne devez aver; qar nous por-  
tasmes bref dentre sur disseisine vers Johan, vostre  
baroun, supposant qil navoit entre si noun par J. de  
Neville qe nous disseisi; proces continue tant qe  
nous recoverimes; jugement si del estat vostre baron  
issi defait devez dower aver.—Et fust mys de moustrer  
par quel jugement; qe dit qe par defalte.—*Thorpe*.  
Statut qe doune le proces voet qil moustre son dreit,  
et ceo ne fait il pas; jugement.—Et fust dit par la  
COURT qil covient qil moustre son dreit, et auxi qil  
covient averer le primer<sup>2</sup> bref.<sup>3</sup>—Et le dreit fust  
moustre.<sup>4</sup>—*Thorpe*, quant a parcele, dit qil ne disseisi  
pas, et, quant al remenant, celui qe porta le bref dentre  
relessa tout son dreit, par ceo fet, a Johan de Neville,  
par qi lentre nostre baroun fust suppose, issi sa accion  
est esteinte, issi recoveri il<sup>5</sup> sur faux title; jugement  
si par tiel recoverir lui puisse de dower forclore.—  
*Derworthy*. Quant a cele qil ad traverse la dis-  
seisine, prest, &c., la disseisine; et quant al relees, nous  
vous dioms qe celui a qi le fet se fist nous prist<sup>6</sup> a  
W., et nous mena au chastel de Somertone, et illoeqes  
nous enprisona, et par duresse de prisoun nous fist  
faire le fet; jugement si par tiel fet puisse lestat  
le baroun affermer.—*Blak*. Nous vous dioms qe

A.D. 1341.  
Dower.  
Nota dun  
dower de-  
mande par  
[un]e  
femme, ou  
allegge fut  
par le  
[ten]ant  
qe soun bar-  
oun navoit  
[ent]re  
sinoun par  
disseisine,  
et [la]  
femme dit  
que le  
disseisi  
[rel]essa  
a soun  
baroun tout  
le [esta]t  
qil avoit en  
mesme la  
[terre],  
durant la  
disseisine,  
et demanda  
[jugement]  
si ele ne  
doit dower  
[aver].  
Et lautre  
conust bien  
le [rele]s,  
mez il dit  
qe, a temps  
[qe l]a re-  
les fut fait,  
il fut en  
[priso]ne a  
tiel lieu, et

<sup>1</sup> From T., L., and 16,560. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 259, but does not materially differ from the report, which seems unusually good.

<sup>2</sup> primer is in T. alone.

<sup>3</sup> L., dreit soun baroun.

<sup>4</sup> This sentence is not in L.

<sup>5</sup> T., ceo recoverir, instead of recoveri il.

<sup>6</sup> The words nous prist are not in L.



## No. 37.

A.D. 1341. J. de Neville was Sheriff at the same time, and W. de Bukmynster was indicted of a certain felony, and by the King's command J. de Neville took him, and brought him to Somerton Castle, and there delivered him to Henry de Beaumont,<sup>1</sup> Warden of the Castle, by the King's command; judgment, since he was in the custody of another person at the time of the making, whether by such imprisonment he can avoid the deed. —*Derworthy*. That is tantamount to saying that, as to you, he was at large; and, besides, it might be that he was in the custody of another person by your procurement, and that he made the deed, by duress of imprisonment, against his will.—*Thorpe*. Then you ought to have so pleaded; and we tell you that you shall not be admitted to aver the imprisonment, because we admit it; and a man may well enough make an obligation and other deeds with a view to his liberation; and we tell you, as above, that he was in the custody of another person, and he made the deed of his own free will, without duress of imprisonment; ready, &c.—*Derworthy*. That the deed was made by duress of imprisonment and against his will, ready, &c.—And the other side said the contrary.

Note :  
Voucher.

(37.) § Note that one was admitted to defend his right, and vouched Roger le Macer, and the Sheriff returned that Roger was dead.—*Pole* vouched another.—*Gayneford*. He vouches a stranger in blood to him who was first vouched; judgment.—*Pole*. We understand that we may vouch at large, and if it appear to the Court that we may not, we are ready to say something else.—And because he did not show another cause for voucher, HILLARY ousted him by judgment from that voucher.—*Quære*.

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<sup>1</sup> The name so appears in the record.

## No. 37.

J. de Neville fust Vicounte a mesme le temps, et W. Bukmynstre fust endite de certain felonie, et par comandement le Roi il lui prist, et lui mena a chastel de Somertone, et illoeques lui livera a H. Beaumont, gardein du chastel, par comandement le Roi; jugement, del houre qil fust en autri garde a temps de la confection, si par tiel enprisonement puisse le fet voider. —*Derworthi*. Taunt amont quant a vous qa large; et, ovesqe ceo, il purreit estre en autri garde par vostre procurement, et qil fist le fet par duresce<sup>3</sup> de prisoun, contre son gree.—*Thorpe*. Donques duissez vous issi aver plede; et vous dioms qe daverer lenprisonement vous ne serrez pas resceu, qar nous le conisoms; et homme purra faire obligacion et autres fetz<sup>4</sup> pur cause de sa deliverance assetz bien; et vous dioms, *ut supra*, qil fust en autri garde, et de son gree il fist le fet, saunz duresse<sup>5</sup> de prisoun; prest, &c.—*Derworthy*. Que le fet se fist par durese<sup>6</sup> de prisoun et contre son gree, prest, &c.—*Et alii e contra*.<sup>7</sup>

A.D. 1341.  
dit qe [le  
r]eles fut  
fait par  
cohercion  
[et n]e  
mye par  
soun boun  
gre, [et de-  
mand]a  
jugement,  
&c. Et  
lautre e  
contra.  
[Et, si]  
trove soit  
qe fut fait  
[cont]re  
soun gree,  
ele ne  
[rec]overa  
rien, ut  
patet pluis  
[plein]e-  
ment en  
cest plee,  
&c.<sup>1</sup>  
[Fitz.  
Dower,  
80.]

(37).<sup>8</sup> § Nota qun fust resceu a defendre son dreit, et voucha Roger le Macer, et le Vicounte retourna qil est mort.—*Pole* voucha un autre.—*Gayn*. Il vouche estraunge du sank a celui qe fust primes vouche; jugement.—*Pole*. Nous entendoms qe nous poms voucher a large, et si Court veie qe noun, prest a dire autre chose.—Et pur ceo qil ne moustra pas autre cause de voucher, HILL. lui ousta, par agard, de ceo voucher.—*Quære*.

Nota:  
Voucher.<sup>9</sup>  
[Fitz.  
Voucher,  
23.]

<sup>1</sup> The whole of the marginal note, except the first word, is from L. alone, in which MS., however, it has been injured by binding.

<sup>2</sup> T., Beaumont; L., Bealmond.

<sup>3</sup> T., durte; 16,560, duresce.

<sup>4</sup> L., autrefoith, instead of autres fetz.

<sup>5</sup> T., durete; 16,560, duresce.

<sup>6</sup> T., durte; 16,560, duresce.

<sup>7</sup> The award of the *Venire*, and several adjournments appear on the roll, but nothing further.

<sup>8</sup> From T., L., and 16,560.

<sup>9</sup> The word voucher is in 16,560 alone.

## Nos. 38, 39.

A.D. 1341.  
Assise of  
Novel  
Disseisin.

(38.) § An assise was brought against James de Audele and others in the country, where one answered as tenant, and alleged a writ of a higher nature pending in the Bench, &c.; and upon this they were adjourned to the Bench, where the tenant, being called, made default. The plaintiff prayed his judgment, and was willing to release the damages. And it was said that, for the advantage of the King, the assise must be taken, for the possibility that the disseisin might be found to have been with force and arms, and on account of the amercement, and because, perhaps, another person is tenant.—HILLARY. We understand that no other is tenant but he who has pleaded as tenant, and he has lost his land by Statute<sup>1</sup> because of his false voucher of a record; and by the assise it would not be enquired whether another person be tenant, and this point has been adjudged before. Witness the case of Kymberley.—And then the plaintiff prayed the assise for damages. And it was remitted to be taken by the Justices of Assise for damages.

Dower.

(39.) § Dower. The demand was for the third part of a moiety of certain rent, and of the profit arising

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<sup>1</sup> 13 Edw. I. (Westm. 2), c. 25.

Nos. 38, 39.

(38.)<sup>1</sup> § Assise porte vers James Daudle et autres A.D. 1341.  
 en pais, ou un respondi come tenant, et aleggea bref Assisa  
Novæ Dis-  
seisinæ. de pluis haut nature pendant en Bank, &c.; et sur  
 ceo furent ajournes en Bank, ou le tenant, demande,  
 fist defalte. Le pleintif pria son jugement, et voleit  
 relessier les damages. Et fust dit qe, pur lavantage  
 le Roi, il covient prendre lassise, pur la possibilite qe  
 ceo serra trove a force et as armes, et pur lamercie-  
 ment,<sup>2</sup> et par cas autre est tenant.<sup>3</sup>—HILL. Nous  
 entendoms nul autre estre tenant forsque celui qad  
 plede come tenant, et il ad perdu sa terre par statut  
 par faux vouchier de record; et par assise ne serra  
 pas enquis si autre soit tenant, et ceo point ad este  
 ajugge avant. *Teste Kymberley.*—Et puis le pleintif  
 pria assise pur damages. *Et remittitur capienda pro  
 damnis.*

(39.)<sup>4</sup> § Dower. La demande fust de la terce partie Dower.  
[Fitz.  
Dower,  
81.] de la moite de certeine rent, et de la profist avenant

<sup>1</sup> From T., L., and 16,560. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., B<sup>o</sup>. 274, d. It there appears that the assise was brought at Hereford by Roger de Henyne against James de Audale and Margery his wife, John Lowargh, and others. James, by bailiff, pleaded that he had nothing but a reversion expectant on the death of the tenant for life (John Lowargh). The latter answered as tenant, and said that the plaintiff had previously brought a writ of Intrusion against him in the Court of Common Pleas, on which were several adjournments, and that so a writ of a higher nature than one of Novel Disseisin was pending in the King's Court in

respect of the same tenements, and he prayed judgment whether he ought to answer. The plaintiff denied that there was any such plea pending, and a day was given for Lowargh to produce the record, but he did not appear. "Ideo capiatur assisa versus prædictos Jacobum et alios qui superius placitaverunt ad assisam, &c., et de damnis versus prædictum Johannem Lowargh, &c. Et recordum inde, una cum brevi originali, remittitur præfatis Justiciariis ad capiendum inde assisam in patria, &c."

<sup>2</sup> T. and L., laverement.

<sup>3</sup> The words et par cas autre est tenant are in T. alone.

<sup>4</sup> From T., L., and 16,560.

## No. 39.

A.D. 1341. from the fair of N. to be held on St. Edmund's day for eight days following, and of the market in the same vill to be held on Monday in every week throughout the year, and of the Court of the same market.—And exception was taken to the demand, because the third part of the profit was demanded, and not the third part of the fair and of the market, as in the case of the office of bailiff; for if such a demand were maintained, it would follow that she would have profit without charge.—*Thorpe*. The gross is not severable; wherefore the dower must be demanded of that which can be severed, and that is the profit; and also it may be that her husband had the profit and not the fair or the market.—And then view was demanded.—*Thorpe*. You entered by our husband.—And notwithstanding that view was demanded of the soil, and so of another thing, &c., HILLARY said that the counterplea was good.—Afterwards, as to part of the rent, he vouched to warranty the heir of the husband (whose body is in the wardship of B., and part of whose lands are in the wardship of another person, and part in the wardship of the demandant) to be summoned, &c.; and he showed a specialty; and as to the residue of the rent, he said, Never seised. And as to the market, he showed the charter of the King by whose grant he held it, and he prayed aid of the King. And as to the fair, he said that he held a fair by the King's charter on the day preceding the eve, and the eve, and the day, and the morrow of St. Edmund, and for three days following, so that this could not be the same fair as that of which she demanded the profit, and thus (said he) we can not be tenant of her demand; judgment of the writ.—*Blak*. Tenant of our demand; ready, &c.—*Pole*. You shall not be admitted to that in opposition to the King's charter.

## No. 39.

de la Feire de N. a tenir le jour Seint Edmond<sup>1</sup> par A.D. 1341. viij. jours ensuantes, et del marche en mesme la ville a tenir par jour de Lundy de chescune symaigne par tout lan, et de la Court de mesme la marche.—Et la demande est chalange de ceo qe terce partie del profist est demande, et noun pas de la Feire et de marche, come de baillie<sup>2</sup>; qar si cele demande fust meintenu, ensuereit qele avereit profist sanz charge.—*Thorpe*. Le gros nest pas severable; par quei il covient demander dower de ceo qe poet estre severe, et cest le profist; et auxi poet estre qe son baroun avoit le profist et noun pas la feire ne la marche.—Et puis la vewe est demande.—*Thorpe*. Vous entrastes par nostre baroun.—Et *non obstante* qe la vewe est demande del soil,<sup>3</sup> et issi dautre chose, &c., *HILL*. dit qe le contrepleder est bon.—Puis, quant a partie de la rente, il voucha a garrant leir le baroun, qi corps est en la garde B., et partie des terres en autri garde,<sup>4</sup> et partie en la garde la demandant, et serront somons, &c.; et mostra especialte; et quant al remenant de la rente, unques seisi. Et quant al marche, il moustra la chartre le Roi par qi graunt<sup>5</sup> il le<sup>6</sup> tient, et pria eide du Roi. Et quant a la feire, il tynt un feire par chartre le Roi<sup>7</sup> la surveillance, et la veille, le jour, et lendemeyn de Seint Edmond,<sup>8</sup> et par iij. jours ensuauntz, issi qe ceo ne poet estre mesme la feire de quele ele demande la profist, et issi ne poms estre tenant de sa demande; jugement du bref.—*Blaik*. Tenant de nostre demande; prest, &c.—*Pole*. Vous navendrez pas contre la chartre le Roi.

<sup>1</sup> T., Esmoun.<sup>2</sup> L., &c., instead of de baillie.<sup>3</sup> T., de la soile.<sup>4</sup> L., garde dautres, instead of autri garde.<sup>5</sup> L. and 16,560, garrant.<sup>6</sup> L. and 16,560, se.<sup>7</sup> The words par chartre le Roi are in T. alone.<sup>8</sup> T. and 16,560, Esmond.

## No. 40.

A.D. 1341. (40.) § A. brought her writ of Entry against B., sup-  
 Entry dum posing that B. had not entry but by herself.—*Pole*.  
 fuit infra We do not admit that she was under age at the time  
 ætatem. of the lease; and we tell you that we entered by  
 So note her and one C.; judgment of the writ.—*Thorpe*. We  
 that when can not have a writ on a lease by any other person  
 two per- unless he was our ancestor; and that he does not say,  
 sons pur- nor does he allege that C. is living which would be  
 chase cer- a stay of this suit, so that this can not go to the  
 tain land abatement of our writ; and when he pleads to the  
 or tene- entry, it is properly to the action, for the entry and  
 ments, the  
 one being  
 under age  
 and the  
 other of

## No. 40.

(40.)<sup>2</sup> § A. porta son bref dentre vers B., supposant qil navoit entre si noun par lui mesme.—*Pole*. Nous ne conisoms pas qil fust deinz age a temps du lees; et vous dioms qe nous entrames par lui et un C.; jugement du bref.—*Thorpe*. Dautri lees ne poms aver bref sil ne fust nostre auncestre; et ceo ne dit il pas, ne il nalegge sa vie qe serreit areste de ceste suyte, issi ne poet ceo estre a nostre bref abatre; et quant il parle al entre, cest proprement al accion, qar lentre

A.D. 1341.  
Entre dum  
fuit infra,  
etatem.<sup>1</sup>  
Sic nota qe  
quant ij.  
hommes  
purcha-  
[cen]t cer-  
teyn terre  
ou tene-  
ments,  
[lu]n deinz  
age et  
lautre de

<sup>1</sup> The portion of the marginal note from Sic nota to the end is from L. alone.

<sup>2</sup> From T., L., and 16,560. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 887, d. It there appears that the action was brought by John de Coston and Juliana his wife ("quæ plenæ ætatis est, &c.") against Alice le Knyght and Roger her son, in respect of tenements "quæ eadem Juliana eis dimisit dum infra etatem fuit, &c." They counted of Juliana's seisin in her demesne as of fee. The tenants pleaded that the demandants could not claim right in the tenements, because Juliana, while sole, and one John, son of Richard le Knyght, purchased the tenements to hold to them and their heirs, and Juliana (being then of age) and John son of Richard jointly demised to Alice and Roger for the life of Alice, and they demanded judgment whether the demandants ought to have action against them in respect of a moiety of the tenements, "ex quo ipsi tenent tenementa illa tam ex dimissione prædicti Johannis filii Ricardi quam præ-

"dictæ Julianæ qui habuerunt feodum simplex in tenementis illis." As to the other moiety, they pleaded that Juliana was of full age at the time of the demise, on which point issue was joined. The demandants, as to the first-mentioned moiety, did not in their replication deny the purchase, as alleged in the plea, but said that John son of Richard died long ago, and inasmuch as "prædicti Alicia et Rogerus allegarunt prædictam dimissionem eis factam fuisse ad terminum vite ipsius Aliciæ tantum, in quo casu actio de integro tenementorum prædictorum ipsis Johanni et Julianæ de jure competit ratione juris accrescendi, pro eo quod feodum simplex in personam ipsius Julianæ post mortem prædicti Johannis filii Ricardi semper remanebat, et prædicti Alicia et Rogerus quo ad illam medietatem nihil aliud ad breve suum respondent, petunt judicium et seisinam ejusdem medietatis sibi adjudicari, &c." The tenants rejoined, that whereas the demandants admitted Juliana to have been joint tenant with John son of Richard, "et eos sequelem statum habuisse in prædictis tenementis,



## No. 40.

A.D. 1341. the lease are all one in this writ, and he did not full age, plead it so strongly as to oust us from the action, and aliene and he does not deny that our lease was made while to a stranger in fee or for under age; judgment.—*Pole*. I will not plead to term of the action until you have a good writ.—*Thorpe*. What life, and he writ shall I have? And suppose that two persons who was lease, being under age, he who survives would have of full age an action for the whole; or if two persons purchase dies, the to hold to them and the heirs of one of them who is other who under age, and they aliene, and he who was under age may enter, and if the alienee bring assise, and the facts be found, he shall recover nothing, as appears in this plea.<sup>1</sup> And if the case were such that we should be barred of a moiety by the demise of the other, that should come by way of answer; but we must demand the whole; for even if we demanded a moiety, he would have the same exception he now puts forward.—*Stouford*. We pleaded to the manner of our entry, and if there be a cause which gives you alone the action and the writ, show it.—And then *HILLARY* said that if the tenant do not allege that the other is living, or if he take the plea to the action, it is no plea; therefore say something else if you will.—*Pole*. We tell you that C. and the demandant purchased to hold to them and their heirs, and leased to us for our life, at which time C. was of full age; judgment whether you ought to have an action for the moiety

<sup>1</sup> It can hardly be said that this marginal note is strictly applicable to the text. It is difficult to distinguish in the MSS. the difference between the French word for entry

and the French word for entirety, and it may be doubted whether the confusion may not have given rise to the note.

## No. 40.

et le lees est tout un en ceo bref, et il nel plede pas si fort qe nous ouste daccion, et nostre lees<sup>1</sup> deinz age ne dedit il pas; jugement.—*Pole.* Jeo ne pledra pas al accion [tanqe vous averez bon bref.—*Thorpe.* Quel bref averai jeo? Et jeo pose qe deux lessent, deinz age, celui qe survist averoit accion]<sup>2</sup> de lentier; ou si deux purchacent a eux et a les heirs lun qest deinz age, et il alienent, et celui deinz age survist, il avera accion de lentier. Et si le cas fust tiel qe de la moite nous serroms barre par la demise de lautre, ceo vendreit par voie de respouns; mes il nous<sup>3</sup> covient demander lentier; qar mesqe nous demandames la moite, il averoit mesme la chalenge qil doune ore.—*Stouf.* Nous pledames a la manere de nostre entre, et sil eit cause qe vous doune soul laccion et le bref, moustrez le vous.—Et puis *HILL.* dit qe si le tenant nalegge la vie lautre, ou qil preigne le plee a laccion, ceo nest pas plee; par quei dites autre chose si vous voillez.—*Pole.* Nous vous dioms qe C. et le demandant purchacerent a eux et a lour heirs, et nous lesserent a nostre vie, a quel temps C. fust de pleine age; jugement si de la moite contre sa

A.D. 1341.  
[pl]eyn  
age, et  
alienount  
a un [es-  
tr]aunge  
en fee ou  
a terme  
[de] vie, et  
celui de  
pleyn age  
[de] vie,  
lautre  
deyns age  
put [en-  
t]rer, et  
si lautre  
porte  
lassise,  
[et] la  
verite soit  
trove, il  
[ne] reco-  
vera rienx,  
ut patet  
in isto  
[placi]to,  
&c.  
[Fitz.  
Dum fuit  
infra ata-  
tem, 1.]

“ et similiter non dedicunt prædico-  
“ tam dimissionem in forma præ-  
“ dicta factam, petunt judicium, ut  
“ prius, si de medietate prædictorum  
“ tenementorum, de qua de jure  
“ adjudicatur dimissio prædicti Jo-  
“ hannis filii Ricardi, actionem seu  
“ quicquam juris ipsius Julianæ  
“ habere seu exigere debeant, &c.”  
The demandants surjoined, “quod  
“ cum prædicti Alicia et Rogerus  
“ non dedicunt quin prædictus Jo-  
“ hannes filius Ricardi obiit, et  
“ cognoverunt prædictam dimis-  
“ sionem eis fuisse factam ad ter-  
“ minum vite ipsius Aliciæ tantum,  
“ in quo casu actio de integro te-

“ nementorum prædictorum ipsis  
“ Johanni et Julianæ de jure com-  
“ petit, petunt judicium ut prius.”  
As to the moiety on which issue  
was joined, the jury found for the  
demandants that Juliana was under  
age at the time of the demise, and  
judgment was given for the de-  
mandants to recover seisin. As to  
the other moiety, there were several  
adjournments, but no judgment ap-  
pears on the roll.

<sup>1</sup> L., relees.

<sup>2</sup> The words between brackets  
are not in L.

<sup>3</sup> 16,560, ne.

## No. 41.

A.D. 1341. in opposition to his demise. And as to the other moiety, which concerns you, at the time of the lease you were of full age.—*Thorpe*. This plea of full age goes to the whole, and as to that we will aver our writ.—And the other side said the contrary.—*Thorpe*. Of the residue, we hold that by law we are discharged.—*HILLARY*. As to the parcel which he has by lease from you, that is to say, a moiety, he traverses your writ; and as to the residue, he shows that by law the lease is by another; wherefore we do not hold the plea to be double.—And this was said by way of judgment, notwithstanding that strong exception was taken to it.—*Thorpe*. We tell you that A. and C. purchased to hold to them and their heirs, and leased to B. for her life; and we tell you that C. is dead, and so the right to the whole always continues in us, and we can not arrive at it in any other way than by this action; judgment.—*Pole*. And since you do not deny that you two leased, therefore, whether he be dead or living, in respect of the moiety which is in law of the lease of another you are barred.—And so to judgment.—They were adjourned.

Avowry. (41.) § The Prior of P. avowed by reason that he had a Leet to be holden on a certain day, at which day all the resiants, free and others, ought to come; and his bailiff shall choose twelve free men to present matters which are presentable, and shall deliver their names to the Steward, and he shall cause them to make oath, and shall deliver to them the articles, &c. And the Prior alleged prescription in the usage. And he said that the plaintiff, who is a free man, was among others chosen and would not make oath, wherefore he was amerced, and affeered, &c.; and for the amercement, &c.—*Thorpe*. It is very true that he has a view [of Frank-pledge]; and we tell you

## .No. 41.

demise devez accion aver. Et quant a lautre moite A.D. 1341. afferant a vous, a temps du lees vous fuistes de pleine age.—*Thorpe*. Ceo plee de pleine age est a tout, et quant a ceo nous voloms averer nostre bref.—*Et alii e contra*.—*Thorpe*. Del remenant, nous tenoms par ley estre descharge.—*HILL*. De la parcele qil ad de vostre lees, saver, la moite, il traverse vostre bref; et quant al remenant, il moustre en ley qe cest autri lees; par quei nous tenoms pas le plee double.—Et ceo fust dit par agard, *non obstante* qe ceo fust fort<sup>1</sup> chalange.—*Thorpe*. Nous vous dioms qe A. et C. purchacerent a eux et a lour heirs, et lesserent a B. pur sa vie; et vous dioms qe C. est mort, et issi le dreit tout temps continue en nous del tout, et par autre voie ne poms avener forsque par cest accion; jugement.—*Pole*. Et del heure qe vous ne deditez pas qe vous ij. ne lessastes, et issi, le quel<sup>2</sup> qil soit mort ou en vie, de la moite qest en ley autri lees vous estes barre.—*Et sic ad iudicium*.—*Adjournantur*.

(41.)<sup>3</sup> § Le Priour de P. avowa par la resoun qil Avowere. ad lete a tenir par certain jour,<sup>4</sup> a quel jour<sup>5</sup> touz les reseauntz, fraunk et autres, doivent venir; et son bailif eslirra xij. fraunks pur presenter choses presentables, et livra lour nouns a Seneschal, et il les fra jurer, et les livra les articles, &c. Et lia prescription en lusage. Et dit coment le pleintif, qest fraunk, entre autres fust eslu et ne voleit pas jurer, par quei il fust amercie, et affure, &c.; et pur lamerceement, &c.—*Thorpe*. Bien est verite il ad vewe;

<sup>1</sup> L., fet fuit; 16,560, fait fut, instead of fust fort.

<sup>2</sup> In T. the words issu soit are inserted after le quel.

<sup>3</sup> From T., L., and 16,560.

<sup>4</sup> L., jours.

<sup>5</sup> The words a quel jour are omitted from 16,560; in L. the word ou is substituted.

## No. 42.

-A.D. 1341. that the deciners, and their *decennæ* ought to present, &c., and such is the custom, without this that free men chosen by the bailiff ought to present or from all time have presented, as he supposes by his avowry; ready, &c.—*Stouford*. It is not admissible to take issue on the manner of the presentment; for if free men ought to present, but in a different manner from that which I have said (which ought to be shown), that would go to abate the avowry, and the gross of the action would stand; but if you will say that free men have not presented, then you destroy my avowry and my action.—*Thorpe*. Then do you refuse the averment?—*Stouford*. The issue is double and not certain; for by the issue it may be understood that free men ought not to present, or perchance that they presented, but not by election; and one point may be found for you, and the other point may be found for us, and thereupon no judgment can be given; and it is necessary to know whether your issue extends to give any other manner of avowry, or to prove that no avowry lies in this case.—*HILLARY*. Whatever point of the avowry may be false, by the finding on the issue he will recover his damages; and he shall not give you a good avowry.—*Stouford*. Since you will it, we will maintain our avowry.—*Thorpe*. Ready, &c., as above.—And the other side said the contrary.

Note concerning  
attornment  
on a fine.

(42.) § Note that Thomas de Fencotes purchased a reversion expectant on the death of Thomas Colville, but so that after the death of Thomas Colville the land should go to George C., if he survived, for the term of his life, and that after the death of both it should revert to John C., the grantor, remainder to Thomas de F. and his heirs; and upon the note the first tenant for term of life alone attorned,

## No. 42.

et vous dioms qe les dizeners<sup>1</sup> et lour dizeyns<sup>2</sup> A.D. 1341. deivent presenter, &c., et tiele est lusage sanz<sup>3</sup> ceo qe fraunks eslieux par baillif deivent ou ont presente de tout temps, solonc<sup>4</sup> ceo qil suppose par savowerie; prest, &c.—*Stouf.* A prendre issu sur la manere del presentement il nest pas acceptable; qar si fraunks deivent presenter, mes par autre manere qe jeo nay dit, quel covendreit estre moustre, ceo serreit al abatement del avowere, et le gros de laccion esterreit; mes si vous voillez dire qe fraunks ne presenterent pas, donques destruez vous mavowere et maccion.—*Thorpe.* Donques refusez vous laverement?—*Stouf.* Lissu est double et en noun certain; qar par lissu poet estre entendu qe fraunks deivent nient presenter, ou par cas qil presenterent, mes nient par eleccion; et lun poet estre trove pur vous et lautre point pur nous, sur quei jugement ne se poet faire; et il covient savoir le quel vostre issu sestent a doner autre manere davowere, ou prover qe nul avowere gist en le cas.—*HILL.* Quel point de lavowere qe soit faux, par lissu trove il recoversa ses damages; et il vous durra pas bon avowere.—*Stouf.* Puisque vous le voillez, nous voloms meintenir nostre avowere.—*Thorpe.* Prest, &c., *ut supra.*<sup>5</sup>—*Et alii e contra.*

(42.)<sup>6</sup> § *Nota* qe Thomas de Fencotes purchacea la reversion apres la mort Thomas Colville, et qe apres sa mort a George C., sil survive, pur terme de sa vie, et qe apres le decees lun et lautre a Johan C., le grantour, &c., deveireit revertir, remeigne a Thomas de F. a lui et ses heirs; et sur la note le primer tenant a terme de vie attourna soulement.

*Nota de attournement sur fyn. [Fitz. Attournement, 10.]*

<sup>1</sup> T., dezeners; 16,560, duzeners.

<sup>2</sup> 16,560, duzeins; the words et lour dizeyns are not in T.

<sup>3</sup> L. and 16,560, qe sanz.

<sup>4</sup> L. and 16,560, sil ount.

<sup>5</sup> The words *ut supra* are in T. alone.

<sup>6</sup> From T., L., and 16,560.

## Nos. 43-47.

A.D. 1341.  
Waste  
found by  
the In-  
quest.

(43.) § Waste was assigned in a hall, an ox-stall, a gate, a barn, and a garden; and on the issue of the tenant waste was found in the whole except the hall.—*Thorpe*. The waste is found around the hall; this by law is adjudged waste, as in the case of wood cut in divers places.—HILLARY. We can only adjudge that you recover the place wasted according to the view of the jurors.—And so it was adjudged.—*Quære*. Whether the hall shall be recovered.

Note con-  
cerning a  
deed  
denied.

(44.) § Note that the heir pleaded in bar a feoffment of the demandant's ancestor made to the tenant's father, and the deed was denied and found to be false; and he was not adjudged to prison, because the deed was not made to himself, &c.

Note con-  
cerning a  
writ of  
False  
Judgment.

(45.) § Note that H. de St. Quintin brought a writ of False Judgment on a judgment given in a Court Baron, and died while his suit was pending. And afterwards his heir came and had garnishment against the tenant, notwithstanding that the original was at an end.—More at the end of this term.

(46.) § Note that in the King's Bench a judgment on a writ of Mesne was affirmed<sup>1</sup>; and whereas the inquest passed on the writ of Mesne at *Nisi prius*, execution for the damages was now awarded by *Elegit* on the lands which the defendant had on the day on which the inquest was taken.—And so note.—See the judgment above.

Formedon  
in the  
Reverter.

(47.) § Formedon in the Reverter on the seisin of Gt., the demandant's cousin, who was seised and took

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<sup>1</sup> T., 15 Edw. 3, No. 22.

## Nos. 43-47.

(43.)<sup>1</sup> § Wast assignie en sale, boverie, porte, grange, A.D. 1341. et gardin; et trove fust a la mise le tenant wast en tout sauf la sale.—*Thorpe*. Trove est le wast environn<sup>2</sup> la sale; par ley est auge wast, come en cas de boys qest cope par taunt en divers lieux.—*HILL*. Nous ne poms ajuger mesqe vous recoverez le lieu waste par vewe des jurours.—Et issi fust agarde.—*Quere* si la sale serra recoveri.

Wast  
trove par  
Enquest.  
[Fitz.  
Jugement,  
134.]

(44.)<sup>1</sup> § *Nota* qe leir pleda en barre par feffement launcestre le demandant fait al pere le tenant, et le fet dedit et trove faux; et il ne fust pas agarde a la prisoun, pur ceo qe le fet ne fust pas fait a luy mesme, &c.<sup>3</sup>

Nota de  
fait dedit.  
[Fitz.  
Imprison-  
ment, 19.]

(45.)<sup>1</sup> § *Nota* qe H.<sup>4</sup> de Saint Quyntine porta bref de faux jugement dun agard fait en Court de baroun,<sup>5</sup> et morust pendant sa suyte. Et puis vient son heir et avoit garnissement<sup>6</sup> vers le tenant, *non obstante* qe loriginal fust amorti.—*Plus in fine istius termini*.<sup>7</sup>

Nota de  
bref de  
faux juge-  
ment.  
[Fitz.  
Faux  
Jugement,  
9.]

(46.)<sup>1</sup> § *Nota* qen Bank le Roi un jugement de bref de mene fust afferme; et la ou lenquest passa en le bref de mene par *Nisi prius*, execucion de damages ore fust agarde par le *Elegit* en les terres qil avoit jour qe lenquest fust pris.—*Et sic nota*.—*Vide judicium supra*.<sup>8</sup>

[Fitz.  
Execucion,  
64.]

(47.)<sup>1</sup> § *Forme* doun en le *Reverti* de la seisine G., son cosyn, qe seisi fust et prist les esplees, qe dona

Forme  
doun en le  
Reverti.  
[Fitz.  
Briefe,  
323.]

<sup>1</sup> From T., L., and 16,560.

<sup>2</sup> L., *Stouf*. Issint; 16,560, *Stof*. La sale issint, instead of "sauf la sale.—*Thorpe*. Trove est le wast environn."

<sup>3</sup> The words a luy mesme, &c are not in T.

<sup>4</sup> L., P.

<sup>5</sup> T., danciene demene instead of de baroun.

<sup>6</sup> T., proces.

<sup>7</sup> The last sentence is in T. alone. See No. 81 next below.

<sup>8</sup> The last sentence is in T. alone.



## No. 48.

A.D. 1341. the esplees, who gave to A. with B. his daughter in frank-marriage, by which gift they were seised in their demesne as of fee and of right, as in frank-marriage, by the form. From A. and B. the descent was to M., as daughter; from M., because she died without heir of her body, the right reverted to G., as donor; from G. it descended to R., as son; from R. it descended to R., as son; from R. it descended to L., as son; from L. it descended to R., the present demandant, as son.—*Thorpe*. Judgment of the writ; for by his count he makes the donor to be his great-great-grandfather, and by the writ he makes him to be cousin, whereas in the writ he ought to be called *abavus* and not *consanguineus*.—KELSHULLE (JUSTICE). When one passes above the great-grandfather, there is no other form but to call the ancestors cousins; for King John, the great-great-grandfather of the present King, is in Latin called cousin.—Wherefore, as to that point, the writ was adjudged good.—And afterwards, by the exception of non-tenure, which the demandant could not deny, the writ abated.

Formedon  
in the  
Descender.

(48.) § Formedon.—*Blair*. He did not give; ready, &c.—*Thorpe*. You can not say that; for we tell you that all the tenements in B. are devisable; and we tell you that A., whom we suppose to have been the donor, devised the same tenements to our ancestor and to the heirs of his body, &c., by virtue of which devise he was seised; and we can not have any other writ in the Chancery except upon the gift; judgment whether you shall be admitted to traverse the gift in this case.—*Blayk*. Since he has acknowledged that the supposed donor did not give. and so acknowledged the reverse of his writ, judgment. And as to the rest of his statement about the devise, the law does not put me to answer; wherefore, judgment of the writ.—

## No. 48.

a A. ove B. sa fille en fraunk mariage, par quel doun A.D. 1341. ils furent seisiz en lour demene come de fee et dreit, come de fraunk mariage, par la forme. De A. et B. descendi a M., come a fille; de M., pur ceo qele morust saunz heir de soun corps, reverti le dreit a G., come a donour; de G. descendi a R., come a fitz; de R. descendi a R., come a fitz;<sup>1</sup> de R. descendi a L., come a fitz; de L. descendi a R., come a fitz, qore demande.—*Thorpe*. Jugement du bref; qar par counte il fait le donour tresael a ly, et par bref il le fait cosyn, ou il serreit nome el bref *abavus* et noun pas *consanguineus*.—*KELS. (JUSTICE)*.<sup>2</sup> Quant homme passe besael par amount il ny ad autre forme forsque les nomer cosyns;<sup>3</sup> qar le Roi Johan, tresael le Roi qor est si est en latyn nome cosyn.—Par quei, quant a ceo point, le bref fuit agarde bon.—Et puis, par noun-teneue, qe le demandant ne poet dedire, le bref abatist.

(48.)<sup>4</sup> § Forme de doun.—*Blarik*. Il ne dona pas; prest, &c.—*Thorpe*. Ceo ne poetz dire; qar nous vous dioms qe touz les tenementz en B. sont divisables; et nous vous dioms qe A., qe nous supposoms donour, devisa mesme les tenementz a nostre auncestre et a les heirs de son corps, &c., par quel devis<sup>5</sup> il fust seisi; et nous ne poames autre bref avoir en la Chauncellerie forsque sur doun; jugement si a traverser le doun en ceo cas serrez resceu.—*Blarik*. Del heure qil ad conu qil ne dona pas, et issi le revers de son bref, jugement. Et al remenant qil parle de devys, ley ne me mette a respondre; par quey,<sup>6</sup> jugement de bref.<sup>7</sup>—

<sup>1</sup> The words de R. descendi a R., come a fitz, are in T. alone.

<sup>2</sup> L. and 16,560, *BASSET*, instead of *KELS. (JUSTICE)*.

<sup>3</sup> L. and 16,560, *de sus*.

<sup>4</sup> From T., L., and 16,560.

<sup>5</sup> L., *doune*.

<sup>6</sup> The words par quey are not in T.

<sup>7</sup> The words de bref are not in T.

Forme de  
doun en  
descender.  
[Fitz.  
Briefs,  
324.]

## No. 48.

A.D. 1341. *Thorpe*. Suppose that land given in tail to my ancestor be lost, and by voucher he recover so much land to the value, the issue in the descent will not have any other writ for that value recovered but a common writ; and even though the gift be traversed, he will maintain his writ on the special fact, and will oust the tenant from traversing the gift generally, and will put him to plead to that special matter; so in the present case, &c.; and since you wish to abate my writ on the ground of my admission, I pray that the fact, as I have alleged it, be held as not denied, and I pray seisin.—*Blaik*. If it appear to the Court that such a writ is maintainable on such matter as you speak of, we are ready to give a sufficient answer.—*Thorpe*. By the manner of your first plea the fact is admitted, and you shall never traverse it afterwards.—*Blaik*. We are pleading only to the writ, and if you think that what they speak of is equivalent to a gift, ready, &c., that he did not give.—*HILLARY*. You shall not be admitted to the averment without answering to what he has specially alleged.—*Blaik*. As to a moiety, he whom you suppose to have devised was not seised, nor had he ever anything therein; ready, &c.—And the other side said the contrary.—And as to the other moiety, he did not devise it; ready, &c.—And the other side said the contrary.—*BASSET*. The COURT will consider whether the issue be admissible.—And in this plea it was said that in respect of a reversion granted in fee tail expectant on the death of tenants for term of years, the writ should be called in question, and that the gift generally should not be traversed; and also that a Formedon does not lie for land rendered by fine in tail until it be executed.—And afterwards, as to a moiety, they were at issue that he who devised never had anything so that

## No. 48.

*Thorpe.* Jeo pose qe terre done en la taille a<sup>1</sup> moun A.D. 1341. auncestre soit perdu, et par voucher il recovere ataunt de terre a la value, lissu<sup>2</sup> en le descente<sup>3</sup> de cele value recovery<sup>4</sup> navera autre bref forsque comune bref; et mesqe le doun soit traverse, il mayntendra son bref sur le fet especial, et oustra le tenant de traverser le doun generalment, et lui mettra a pleder a cel matere especial; auxi en<sup>5</sup> ceo<sup>6</sup> cas icy, &c.; et del houre qe de ma conisance vous voles abatre mon bref, jeo prie qe le fet, tiel come jeo lay alegge, soit tenu nient dedit, et prie seisine.—*Blayk.* Si Court veie qe sour tiele matere come vous parles qe tiel bref soit<sup>7</sup> meintenable, prest a respondre assetz.—*Thorpe.* Par la manere de vostre primer plee le fet est conu, et jammes ne le traverserez apres.—*Blayk.* Nous pledoms forsque al bref, et, si vous entendez qe ceo qe il parlent contrevant doun, prest, &c., qil ne dona pas.—*HILL.* Al averement ne serrez resceu saunz respondre a ceo qil ad alegge en especial.—*Blayk.* Quant a la moite, celui qe vous supposez qe devisa ne fust pas seisi, ne unques rien avoit; prest, &c.—*Et alii e contra.*—Et quant a lautre moite, il ne devysa pas; prest, &c.—*Et alii e contra.*—*BASS.* COURT savisera si lissu soit resceivable.<sup>8</sup>—Et en ceo plee fust parle qe de reversion graunte apres le deces tenantz<sup>9</sup> a terme des aunz en fee taille, qe le bref serra dedit, et<sup>10</sup> le doun generalment ne serra pas traverse; et auxi qe terre rendu par fyne en la taille, tanqele soit execut, qe forme de doun ne gist pas.—Et puis, quant al moite, il sont a issu qe celui qe devysa navoit unques rien si qil poet

<sup>1</sup> T. and 16,560, par.<sup>2</sup> lissu is in T. alone.<sup>3</sup> L., estente instead of le descente.<sup>4</sup> 16,560, recovere; L., jeo.<sup>5</sup> L. and 16,560, com.<sup>6</sup> ceo is in T. alone.<sup>7</sup> L., serroit.<sup>8</sup> L., resonable; 16,560, resonable.<sup>9</sup> L., un tenant.<sup>10</sup> T., qe.

## No. 49.

A.D. 1341. he could devise; and as to the residue, that the demandant's ancestor was never seised by virtue of the devise, ready, &c.—And the other side said the contrary.

**Avowry.** (49.) § Rose<sup>1</sup> complained in respect of her beasts tortiously taken.—*Thorpe* avowed by reason that the manor of S., whereof the place where the taking was effected is parcel, together with the manors of A. and B., were in the seisin of one D., who died seised thereof as of fee; from him they descended to Rose, Florence, Constance<sup>2</sup> and Joan, as sisters; from Joan issued John, between whom and Rose and her husband and the other parceners a partition was made, so that the manor of S., whereof the place, &c., was allotted to Rose and

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<sup>1</sup> There was a Rose who, according to the record, married Robert de Chilham. In L. and 16,560 she is called Rose de B. The plaintiff, however, seems to have been Thomas de Eacure.

<sup>2</sup> It will be seen that in the record the name appears as Matilda. Elsewhere also the report requires careful comparison with the record.

## No. 49.

devyser;<sup>1</sup> et quant al remenant, qe launcestre le de- A.D. 1341.  
mandant ne fust unques seisi par le devys; prest, &c.—  
*Et alii e contra.*<sup>2</sup>

(49.)<sup>3</sup> § Rose se plaint de ses avers a tort pris.— Avowere.  
*Thorpe* avowa par la resoun qe le manere de S., dont [Fits.  
le lieu ou la prise se fist ent est parcele, ensemble- *Aide*, 34.]  
ment ove les manerez de A. et B., furent en la seisine  
un D., qe de ceux morust seisi come de fee; de qi des-  
cendirent a Rose, Florence, Custaunce et Johane, come  
a soers; de Johane issist Johan, entre qi et Rose et  
son baroun et les autres parceners purpartie fust  
fait, issi qe le manere de S., dont le lieu, &c., fust

<sup>1</sup> L. and 16,560, devise faire.

<sup>2</sup> The record of this case is probably that which occurs in the *Placita de Banco*, Michaelmas, 15 Edw. III., R<sup>o</sup>. 309. It there appears that "Willelmus filius Tide-manni de Houtone" brought his action of Formedon in the Descender against Walter Frost of Beverley, in respect of two messuages with the appurtenances in Beverley, which Thomas de Leset gave to Robert de Houton and Joan his wife and the heirs of their bodies. Walter vouches Richard de Hugat of Beverley, who warrants *gratis*, and says that Thomas did not give as alleged, "et hoc paratus est verificare. Et Willelmus dicit quod predictus Ricardus ad istam verificationem admitti non debet, &c. Dicit enim quod tenementa illa sunt legabilia secundum consuetudinem villæ Beverlaci, &c.," and says that Thomas "*legavit*" . . . "et in forma illa dedit" . . . "et hoc paratus est verificare, unde petit iudicium, &c." Et Ricardus quoad unum mesuagium eorundem tenementorum

"dicit quod predictus Thomas de Leset non fuit inde seisitus ita quod medietatem illam legasse potuit. Et quoad aliam medietatem eorundem tenementorum dicit quod predicti Robertus et Johanna nunquam fuerunt seisiti de medietate illa virtute legati predicti." Issue was joined thereon, and the *Venire* awarded. The jury found at *Nisi prius* "quod quoad unum mesuagium predictus Thomas Leset non fuit seisitus de illo mesuagio ita quod illud alicui legasse potuit, et quoad aliud mesuagium dicunt quod predicti Robertus de Houtone et Johanna uxor ejus fuerunt seisiti de mesuagio illo ut de libero tenemento virtute legati predicti." Judgment was given for the demandant as to one messuage, but for the tenant as to the other.

<sup>3</sup> From T., L., and 16,560. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 359. It there appears that the action was brought by Thomas de Escure against John de Sandhurst of Tilmanston. John in his

## No. 49.

A.D. 1341. her husband, in satisfaction of the other manors allotted to the other parceners, and (because the purparty of Rose was worth more than those of the other parceners) rendering out of the manor of S. 60s. by the year to her co-parceners and their heirs and assigns, with a clause of distress, to be paid at certain terms; and by virtue of this grant they were seised; and they granted the same rent to William Kirkeby, and he was seised, by virtue of the grant, through the hands of Rose and her husband; and this W. Kirkeby granted the same rent to Joan, Florence and Constance, and the heirs of John the brother of W., who now avows, and by virtue of that grant they were seised through the hands of Rose and her husband, and, after the death of her husband, through the hand of Rose. And because the rent was in arrear, &c., for 16 years, for 40s. for the first year he avowed as to the mares, and for

avowry says, "quod quidam Rogerus de Tilmanstone fuit seisitus de maneriis de Sturmonthe, Tilmanstone, et Godwynstone, in dominio suo ut de feodo, et inde obiit seisitus sine herede de se, per quod prædicta maneria descenderunt quibusdam Rosæ, Florenciæ, Johannis et Matildi ut sororibus et heredibus, &c. Quæ quidem Rosæ nupsit se cuidam Roberto de Chilham, et de prædicta Johanna exivit quidam Johannes, &c., inter quos Robertum de Chilham, et Rosam, Florenciam, Johannem, et Matildem prædicta maneria partita fuerunt ita quod prædictum manerium de Sturmonthe assignatum fuit parti ipsius Rosæ, reddendo inde annuatim prædictis Florenciæ, Johanni, et Matildi heredibus et assignatis suis sexaginta solidos

"percipiendos de eodem manerio de Sturmonthe, eo quod idem manerium fuit majoris valoris quam aliqua propars prædictorum Florenciæ, Johannis, et Matildi, ita quod, si prædictus redditus eisdem Florenciæ, Johanni, et Matildi, heredibus vel assignatis suis, a retro esset, bene liceret eisdem Florenciæ, Johanni, et Matildi, heredibus et assignatis suis in eodem manerio distringere pro redditu prædicto, qui quidem Florenciæ, Johannes, et Matildis fuerunt seisi de eodem redditu per manus prædictorum Roberti et Rosæ. Et postmodum prædicti Florenciæ, Johannes, et Matildis de propartibus suis, &c., et de prædicto redditu feoffaverunt quendam Willelmum de Kirkeby tenendis eidem Willelmo et heredibus suis in perpetuum, qui fuit

## No. 49.

alote a Rose et a son baroun, en alowance des autres A.D. 1341. maneres alotes a les autres parceners; et, pur ceo qe la purpartie Rose valust puis qe des autres parceners, rendant del manoir de S. lxs. par an a ses parceners a eux et a lour heirs et a lour assignes, ove clause de destresse, a paier a certainz termes; par quel graunt il furent seisiz; et ils graunterent mesme la rent a William Kirkeby, et il seisi par le graunt par la mayn Rose et son baroun; et le quel W. Kirkeby granta mesme la rente a Johane, Florence et Custaunce, et a les heirs Johan frere W., qore avowe, par quel graunt ils furent seisi parmy la mayn Rose et son baroun, et, apres la mort son baroun, parmy la mayn Rose. Et pur ceo qe la rente par xvj. aunz fust arere, &c., pur xls. del primer an il avowa en dreit des jumentz,

"seisitus de prædicto redditu per  
"manus eorundem Roberti et  
"Rosæ, &c., qui quidem Willel-  
"mus postea per chartam suam  
"eadem tenementa simul cum præ-  
"dicto redditu dedit quibusdam  
"Florentiæ de Tilmanstone et Jo-  
"hanni de Sandhurst tenenda ipsis  
"Florentiæ et Johanni et heredi-  
"bus ipsius Johannis, qui fuerunt  
"seisiti de prædicto redditu per  
"manum prædictæ Rosæ. Et de  
"ipso Johanne, quia obiit sine  
"herede de se, descenderunt præ-  
"dicta tenementa simul cum præ-  
"dicto redditu isti Johanni de  
"Sandhurst qui nunc advocat, &c.,  
"ut fratri et heredi, qui quidem  
"Johannes de Sandhurst nunc, &c.,  
"fuit seisitus de eodem redditu  
"per manus prædictæ Rosæ. Et,  
"quia prædictus redditus eidem  
"Johanni per viginti et sex annos  
"ante diem captionis prædictæ a  
"retro fuit, pro quadraginta solidis

"de primo anno prædicto" he  
avows. So also for the second  
year. And he makes *profert* of  
the deeds of partition and of feoff-  
ment. "Et Thomas dicit quod ipse  
"tenet quartam partem prædicti  
"manerii de Sturmonth . . . .  
"ad terminum vitæ suæ; et rever-  
"sio inde post mortem suam ad  
"quendam Johannem filium Jo-  
"hannis de Escure spectat," and  
that he cannot charge or discharge  
that fourth part without the rever-  
sioner. The prayee in aid was  
to be summoned. After several  
adjournments the prayee in aid  
failed to appear. "Ideo prædictus  
"Thomas respondeat sine, &c. Et  
"quia idem Thomas solemniter vo-  
"catus modo non sequitur, &c.,  
"consideratum est quod prædictus  
"Johannes de Sandhurst habeat  
"returnum prædictorum averi-  
"orum."



## No. 50.

A.D. 1341. 20s. of the residue of the rent for the first year and for the rent for the second year he avowed as to the sheep, as in parcel of the tenements so charged.—*Blak.* We have only a term for life in a moiety of the manor of Stourmouth, whereof the place where the taking was effected is parcel, by lease from one W., without whom we can neither charge or discharge, and we pray aid of him.—*Thorpe.* He must first plead to issue.—*HILLARY.* He shall not do so, but let him have the aid.

Formedon. (50.) § A writ was brought against the Abbot of Beaulieu, who alleged that he held the tenements as parson of the church of St. Kevern, of which he was parson imparsonnee, and that he was not named parson; judgment of the writ.—*Derworthy.* He holds the tenements as in right of his church, of which he is Abbot, and not as parson of the church of St. Kevern; ready, &c.—*Thorpe.* You can not say that; for in the time of King Henry a fine was levied between T. and I. his wife, your ancestor on whose seisin you demand, and one A. our predecessor, by which fine T. and I.<sup>1</sup> acknowledged the same tenements to be the right of our predecessor, and the right of his church of St. Kevern, and for that acknowledgement A., our predecessor, granted the same tenements to them for their lives, to hold of him and of his church of St. Kevern by the service of one pound of wax by the year, and after their deaths that the tenements should revert to him and his successors and to his church of St. Kevern; judgment whether you shall be admitted to the averment, unless you show that

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<sup>1</sup> As to the names, see below, p. 384.

## No. 50.

et pur les *xxs.* del remenant del primer an et la rente A.D. 1341.  
del seconde an il avowa en droit de berbitz, come en  
parcele des tenementz issi chargez.—*Blaik.* Nous  
navoms forsque terme de vie en la moite du manoir  
de Sturmeu, dont le lieu ou la prise se fist ent est  
parcele, du lees un W., saunz qi nous ne poms charger  
ne descharger, et prioms eide de lui.—*Thorpe.* Il  
covient qil plede primes a issu.—*HILL.* Noun fra,  
mes eit leide.

(50.)<sup>1</sup> § Bref porte vers Labbe de Beaulieu, qe Forme de  
doun.<sup>2</sup>  
aleggea qil tient les tenementz come persone del  
eglise de Saint Caveran, dont il est persone<sup>3</sup> en-  
persone, nient nome<sup>4</sup> persone; jugement du bref.—  
*Derworth.* Il tient les tenementz come de sa eglise  
dont il est Abbe, et noun pas come persone del eglise  
de Saint Caveran; prest, &c.—*Thorpe.* Ceo ne poez  
dire; qar en temps le Roi H. fyne se leva entre T.  
et I. [sa femme, vostre auncestre de qi seisine vous  
demandez, et un A. nostre predecessour, par quel fyne  
T. et I.]<sup>5</sup> coniseint<sup>6</sup> mesmes les tenementz estre le  
droit nostre predecessour, et le droit de sa eglise de  
Saint Caveran, et pur cele conisance A., nostre pre-  
decessour, graunta mesmes les tenementz<sup>7</sup> a eux a  
lour vies, a tenir de lui et de sa eglise de Saint Caveran  
par un livre de cire par an, et apres lour decees qe  
les tenementz revertirent a lui et ses successours et  
a sa eglise de Saint Caveran; jugement, si vous ne  
moustres pas qe puis cel temps, come par demise et

<sup>1</sup> From T., L., and 16,560. The report appears to be in continuation of Y. B., Hil., 15 Edw. III., No. 19. See that case and the extracts from the record in the notes thereto.

<sup>2</sup> T., *Præcipe quod reddat*, instead of *Forme de doun*.

<sup>3</sup> L., abbe.

<sup>4</sup> L., et non pas come, instead of enpersone nient nome.

<sup>5</sup> The words between brackets are in T. alone.

<sup>6</sup> L. and 16,560, *conissaunt*.

<sup>7</sup> The words *mesmes les tenementz* are not in L.

## No. 50.

A.D. 1341. since that time, as by a divesting and retaking, the tenements became of a different condition.—*Derworthy*. That I., whom you suppose to have been party to the fine, was not our ancestor; for our ancestor, on whose seisin, &c., was the wife of one B., and never the wife of T.; judgment whether you can oust us from the averment.—*Thorpe*. Whether she was your ancestor or not, since you do not deny the fine which proves the tenements to be almoign of the church of St. Kevern, judgment of the writ; for even though you be a stranger, when the fine is pleaded in abatement of the writ, it is equally of force.—*Derworthy*. Since you do not deny that this I. was not our ancestor, whom you suppose to be party to a fine which we, because we are a stranger, ought not by law to admit, and you refuse the averment which we tender in support of our writ, judgment, and we pray seisin.—*Thorpe*. It is not denied by you that there is such a fine; for you demand judgment whether, notwithstanding what we say, you shall not be admitted to maintain your writ; and that is nothing else than whether you shall be admitted contrary to the fine, &c.—*Derworthy*. I have nothing to do with the fine; and it shall never be held to be not denied by us except in pleading to issue in case judgment should pass against us.—*Thorpe*. By this manner of plea the fine must be held to be not denied; for although he turns this by way of protestation, the effect of his plea is no other than that his ancestor was not party to the fine, and that averment can not be admitted in avoidance of the fine, for by such an averment every fine might be avoided; and whether he be privy or stranger, when the fine

## No. 50.

reprise, qil soit dautre condicion, si al avèrement serrez A.D. 1341.

resceu.—*Derworth*. Cele I., qe vous supposes partie a la fyne ne fust pas nostre auncestre, qar nostre auncestre, de qi seisine, &c., ele fust la femme un B., et unques la femme T.; jugement si de laverement nous puissez oster.—*Thorpe*. Le quele ele fust vostre auncestre ou noun, del houre qe vous ne dedites pas la fyne qe prove les tenementz estre almoigne del eglise de Saint Caveran, jugement du bref; <sup>1</sup> qar tout soiez vous estrange, quant la fyne est plede en abatement du bref, owelment est il a charger.—*Derworth*. Del houre qe vous ne dedites pas qe cele I. ne fust <sup>2</sup> pas nostre auncestre, qe vous supposez partie a une fyne quele nous ne devoms conustre par ley, qar nous <sup>3</sup> sumes estrange, et laverement qe nous tendoms en maintenance de nostre bref vous refusez, jugement, et prioms seisine.—*Thorpe*. Il nest pas dedit de vous qil y ad tiel fyne; qar vous demandez jugement si, noun contresteaunt ceo qe nous dioms, si <sup>4</sup> vous ne <sup>5</sup> serrez resceu de meyntenir vostre bref; et ceo nest autre forsque si contre la fyne serrez resceu, &c.—*Derworth*. Jeo nay qe faire de la fyne; et jammes ne <sup>6</sup> serra tenu nient dedit de nous forsquen lissue de plee en cas qe jugement passast contre nous.—*Thorpe*. Il covient qe la <sup>6</sup> fyne par cest manere de plee soit tenu a nient dedit; qar tout ceo tourne <sup>7</sup> il par protestacion, leffect de son plee nest autre mes qe <sup>8</sup> son auncestre ne fust pas partie a la fyne, et cel averement ne poet estre resceu en voidaunce de la fyne, qar par tiel averement serreit chescune fyne voide; et soit il prive ou estrange, quant la fyne nest pris

<sup>1</sup> L. and 16,560, &c., instead of du bref.

<sup>2</sup> 16,560, sufft.

<sup>3</sup> T., qe, instead of qar nous.

<sup>4</sup> T. and L., qe.

<sup>5</sup> ne is not in T.

<sup>6</sup> L. and 16,560, par.

<sup>7</sup> par is in T. alone.

<sup>8</sup> T., contre; 16,560, tournas.

<sup>9</sup> T., si.

## No. 50.

A.D. 1341, is taken only in abatement of the writ, it is not reasonable that he should have the plea in avoidance.—*Derworthy*. If you abate my writ by the fine you oust me from the action, and I say that no law puts me to answer to the fine to which I am a stranger; and if he had alleged that the fine was levied between strangers, he would not have ousted me from averring my writ; and although he has made my ancestor a party to the fine, that is no reason why he should be admitted when the reverse may be the truth; and since he refuses the averment, judgment, and we pray seisin.—*Thorpe*. And we demand judgment of your writ, for the reason above; and if it appear to the Court that the averment is admissible, ready, &c., for we are pleading only to the writ.—*HILARY*. For anything that you have said, we shall adjudge the writ to be good.—And so note that the averment was admissible to maintain the writ, notwithstanding the fine, because the demandant was a stranger to it.—*Thorpe* rehearsed the fine which was levied between Thomas Pridias<sup>1</sup> and Isabel<sup>2</sup> his wife, ancestor of the demandant of the one part, and A. our predecessor of the other part, by which they acknowledged, &c., as above, to be the right of our predecessor, and as of the right of his church, &c., as above, and he rendered back, as above, to them for their lives, saving the reversion to him and his successors; and after their deaths we are in possession by force of the fine; judgment whether you can demand anything.—*Derworthy* said, as above, that the person whom *Thorpe* supposed to be party to the fine was not his ancestor; for (said *Derworthy*) Isabel our ancestor was the wife of one B., and never the wife of Thomas Pridias; ready, &c.; judgment whether the

<sup>1</sup> Pridias, and not Prideas, is the name in the record.

<sup>2</sup> Sibilla, according to the record.

## No. 50.

forsqe al abatement du bref, nest pas resoun. qil eit <sup>1</sup> A.D. 1341. plee en voidance.—*Derworth*. Si vous abates mon bref par la fyne vous me oustes del accion, et jeo die qe nule ley me mette a respondre a la fyne a qi jeo suy estrange; et sil ust alegge la fyne [leve entre estranges, il ne moi ust pas ouste daverer mon bref; et tout eit il fait mauncestre partie a la fyne,]<sup>2</sup> il <sup>3</sup> nest pas resoune qil soit resceu <sup>4</sup> quant le revers poet estre verite; et del houre qil refuse laverement, jugement, et prioms seisine.—*Thorpe*. Et nous demandoms <sup>5</sup> jugement de vostre bref, *causa ut supra*; et si la Court veie qe laverement soit resceivable, prest, &c., qar nous pledoms forsqe al bref.—*HILL*. Par rien qe vous avez dit, nous agarderoms le bref bon.—*Et sic nota* qe laverement fust resceivable en meintenance de soun bref, *non obstante la fyne, quia extraneus*. —*Thorpe* rehercea la fyne qe se leva entre Thomas Prideas et Isabele sa femme, auncestre le demandant dune part, et A. nostre predecessour dautre part, par quele il conisent,<sup>6</sup> *ut supra*, estre le dreit nostre predecessour, et de dreit de sa eglise, &c., *ut supra*, et il rendist arere, *ut supra*,<sup>7</sup> a eux a lour vies, et salvant la reversion a lui et a ses successours; et apres lour decees nous sumes einz par force de <sup>8</sup> la fyne; jugement si vous poez rien demander.—*Derworth, ut supra*, qele ne fust pas sauncestre cele qele il suppose estre partie a une fyne; qar Isabele nostre auncestre fust femme un B., et unges <sup>9</sup> la femme Thomas Pridias; prest, &c.;

<sup>1</sup> The words resoun qil eit are not in L.

<sup>2</sup> The words between brackets are not in L.

<sup>3</sup> il is in L. alone.

<sup>4</sup> L., qe; 16,560, cru.

<sup>5</sup> demandoms is in L. alone.

<sup>6</sup> 16,560, covensit.

<sup>7</sup> The words *ut supra* are in 16,560 alone.

<sup>8</sup> The words force de are in T. alone.

<sup>9</sup> L., noun pas.

## No. 51.

A.D. 1341. law puts us to answer to such a fine.—HILLARY. You must admit the fine now.—*Derworthy*. Certainly I never will.—*Thorpe*. And we demand judgment, since he does not show any diversity in law, as in respect of father or mother, between the two Isabels, but only in respect of different husbands, whereas women may well enough have divers husbands, &c., and thus the averment is by no law admissible; and even if he were to make it, still that would be only in avoidance of the fine, to which he shall not be admitted; witness the case of Gervase Bray in the third year of the present King.—*Gayneford*. And we demand judgment, since you refuse the averment.—And so to judgment.—They were adjourned.<sup>1</sup>

Assise  
of Novel  
Disseisin.

(51.) § Novel Disseisin before HILLARY in the country, where it was alleged in bar of the Assise that the plaintiff previously withdrew from a like writ. And the tenant was told to produce his record. And they were adjourned to Westminster to the present time. And the tenant was called, and appeared by attorney, and he was asked whether he had his record.—*Thorpe*. We tell you that the day given was at short interval, and we sued to William de Schareshulle, with whom the record was, and he was in Wales, and could not be found; and we tell you that the record is now in the Treasury; wherefore, at our peril, we pray another day; and this has been seen heretofore.—HILLARY. That was in time of vacation, when the Courts were closed, so that one could not have access; but you are not in that case.—BASSET. It is strange that this assise should have been adjourned out of the county; for in such a case it has not been usual to do so.—HILLARY. It may be done well enough. And because the plaintiff has released his damages, and

<sup>1</sup> In the end, according to the record, the demandant failed to appear, and judgment was given for the Abbot.

## No. 51.

jugement si a tiel fyne ley nous mette a respondre.—A.D. 1341.

HILL. Il covient qe vous conisez la fyne ore.—*Derworth*. Certes jammes.—*Thorpe*. Et nous demandoms<sup>1</sup> jugement, del houre qil doune nule diversete en ley, come de pere ou de mere, entre les deux Isabeles, mes de divers barouns, ou femmes poent aver assetz bien divers barouns, &c., issi laverement par nule ley acceptable; et tout le<sup>2</sup> fait il, uncore serreit ceo forsque<sup>3</sup> en voidance<sup>4</sup> de la fyne, a quei il ne serra pas resceu<sup>5</sup>; *teste* Gervays Bray, *anno tertio Regis nunc*.—*Gayn*. Et nous jugement, del houre qe<sup>7</sup> vous refuses laverement.—*Et sic ad judicium*.—*Adjournantur*.

(51.)<sup>6</sup> § Novele disseisine<sup>9</sup> devant HILL. en pais, ou fust alegge en barre dassise qe le pleintif se retret autrefoit de autiel bref. Et dit lui fust qil ust son record. *Et adjournantur* ore a Westmoustier. Et le tenant demande, et est par attourne, et demande lui est sil eit son record.—*Thorpe*. Nous vous dioms qe le jour fust court, et nous suimes vers William de Schareshulle, vers qi le record fust, et il fust en Galys, et ne poet estre trove; et vous dioms qe le record est ore en Tresorie; par quei, a nostre peril, nous prioms autre jour; et ceo ad este vewe avant ses heures.—HILL. Ceo fust en temps vacant, quant les places furent clos,<sup>10</sup> qe homme ne poait aver venu; mes vous nestes pas en le cas.—BASSET. Il est merveille qe cest assise fust ajourne hors del counte; qar en tiel cas homme ne soleit pas<sup>11</sup> issi faire.—HILL. Homme le poet faire assetz bien. Et pur ceo qe le pleintif ad relese ses

Assise  
Nova  
Disseisine.  
[Fitz.  
Assise, 96;  
15 Li. Ass.,  
16.]

<sup>1</sup> demandoms is in L. alone.

<sup>2</sup> T., et, instead of ou de.

<sup>3</sup> L., title, instead of tout le.

<sup>4</sup> forsque is not in T.

<sup>5</sup> L. and 16,560, evidence, instead of en voidance.

<sup>6</sup> The words a quei il ne serra pas resceu are in T. alone.

<sup>7</sup> L. and 16,560, desicome instead of jugement del houre qe.

<sup>8</sup> From T., L., and 16,560.

<sup>9</sup> L. and 16,560, *Nota d'assise*, instead of Novele Disseisine.

<sup>10</sup> L., cloos; 16,560, clus.

<sup>11</sup> L., voleit, instead of soleit pas.



Nos. 52-55.

A.D. 1341. you fail of your record, the Court adjudges that the plaintiff do recover his seisin, &c.

Note. (52.) § Note that a day of grace was given against the Earl of Warenne,<sup>1</sup> on a writ of Wardship, notwithstanding that he is a Peer of the Realm, because the plea was pending for judgment, inasmuch as it had been pleaded to the judgment of the Court, and so was pending by the default of the Court.

Note. (53.) § Note that on a writ of Entry *sur disseisin* against the Earl of Huntingdon and his wife in respect of the manor of B., as to a moiety of the manor a release was pleaded in bar, which the demandant could not deny; and as to the residue, they were at issue on the disseisin; and a day of grace was granted, by consent of the parties, from this present morrow of St. Martin until the Octaves of St. Hilary.

Note. (54.) § Note that a recognisance was made to two persons who are dead, and one of whom has two executors and the other only one; and the three executors in common sued execution; and the two, when the defendant was warned, did not come; wherefore the one who appeared prayed execution.—HILARY. You cannot have it, if the others have not appeared, until they be warned to sue; and, by law, the executors of the survivor would alone have the suit.—And afterwards a *Summoneas ad sequendum simul* issued.

Formedon in the Reverter. (55.) § Isabel, who was the wife of W. Ros, of Ingmanthorpe, brought a writ of Formedon in the Reverter against W. Graa, of York, on which was pleaded in bar the feoffment of one Thomas, the

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<sup>1</sup> i.e., probably John de Warenne, Earl of Surrey.

## Nos. 52-55.

damages, et vous faillez de vostre record, si agarde la A.D. 1341. COURT qe le pleintif recovere sa seisine, &c.

(52.)<sup>1</sup> § *Nota* qe jour de grace fust done contre le Counte de Gareine, en un bref de garde, *non obstante* qil est pere de la terre, pur ceo qe le plee pendist en jugement, pur ceo qe le plee fust plede en jugement de Court,<sup>2</sup> et issi pende<sup>3</sup> en defaute de la Court.

*Nota.*  
[Fitz.  
Jour, 21.]

(53.)<sup>1</sup> § *Nota* qen bref dentre sur disseisine contre le Counte de Huntindone et sa femme del manere de B., quant a la moite del manere relees fust plede en barre, quele le demandant ne poet dedire; et quant al remenant, il furent a issu sur la disseisine; et jour de grace, par assent des parties, fust grante yci de lendemene Seint Martyn tanqe utaves Seint Hillare.

*Nota.*  
[Fitz.  
Jour, 22.]

(54.)<sup>1</sup> § *Nota* quene reconisance fust fait a ij. qe sont mortz, dont lun ad ij. executours et lautre forsqe un; et les iij. executours en comune suyrent execucion; et les ij., quant le defendant fust garny, ne vyndrent pas; par quei celui qe aparust pria execucion.—HILL. Ceo ne poez aver, si les autres nussent aparuz, tanqils soient garnis de suyr; et, par ley, les executours celui qe survivereit<sup>4</sup> soul avereit la suyte.—Et puis *Summoneas ad sequendum simul* issit.

*Nota.*  
[Fitz.  
Execu-  
tours, 81.]

(55.)<sup>5</sup> § Isabelle, qe fust la femme W. Ros,<sup>6</sup> de Ingmanthorpe,<sup>7</sup> porta bref de<sup>8</sup> forme<sup>9</sup> doun en le *reverti*<sup>10</sup> vers W. Graa, Deverwyk, ou fust plede en barre le feffement un Thomas, auncestre la demandante,

Forme de  
doun en  
Reverti.  
[Fitz.  
Gar-  
raunte,  
27.]

<sup>1</sup> From T., L., and 16,560.

<sup>2</sup> The words de Court are in T. alone.

<sup>3</sup> T., pent; L., pendant.

<sup>4</sup> T., souvesit; L., sourvist.

From T., L., and 16,560 until otherwise stated.

<sup>6</sup> L., Rose.

<sup>7</sup> T., Yngmanthorpe.

<sup>8</sup> The words bref de are not in T.

<sup>9</sup> forme is not in 16,560.

<sup>10</sup> The words en le *reverti* are not in T., and the word le is not in 16,560.

## Nos. 55.

A.D. 1341. demandant's ancestor, with warranty.—*Thorpe*. Thomas was tenant in tail, whose alienation is restrained by Statute.<sup>1</sup>—*Pole*. You demand fee simple, and the warranty is at common law; and his felony would give escheat to the lord.—*Thorpe*. The words of the Statute<sup>1</sup> are "by deed and feoffment," by which words every kind of deed is restrained equally in relation to him in descent as to him in reversion.—Afterwards, in Trinity term, in the 16th year, *R. Thorpe* said, We demand judgment, inasmuch as she demands a fee simple, and by her action she is proceeding at common law, and the Statute<sup>1</sup> only enures for actions which are given by Statute, and thus the warranty is at common law; wherefore we pray seisin on the forfeiture of her ancestor, which, even although he were tenant in tail, would bar him in reversion.—*W. Thorpe*. Never, unless the demandant demanded on his seisin or made a descent by him; and we are not at all in that case; and the Statute<sup>1</sup> restrains the mischief of the common law, and gives a recovery equally for those in the reversion and for those in the line of descent.—*SCHARSHULLE*. The Statute<sup>1</sup> was made on account of the mischief; now the mischief was this, that immediately after issue born tenants in tail could, by divesting themselves, as well without deed as by deed, disinherit their issue and those in the line of descent; wherefore it seems that the Statute<sup>1</sup> was made only to restrain alienations and not special collateral covenants.—*W. Thorpe*. According to what you say, he in the descent would be barred by the warranty of the tenant in tail.—*SCHARSHULLE*. Perhaps so; for *HILLARY* and I pleaded such a plea before *SCROPE* in the Eyre of Northampton, because we had no other matter, and the plea was pending during the

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<sup>1</sup> 13 Edw. I. (Westm. 2), c. 1. (*de donis conditionalibus*).

## No. 55.

ove garrantie.—*Thorpe*. Thomas fust tenant en la taille, A.D. 1341. qi alienacion est restreint par statut.—*Pole*. Vous demandez fee<sup>1</sup> simple, et la garrantie est a la comune ley; et sa felonie dorreit<sup>2</sup> eschete au seignur.—*Thorpe*. Lestatut voet *per factum et feoffamentum*, par quels paroles chescun manere de fait est restreint<sup>3</sup> owelment pur celui en le descente et en le *reverti*.<sup>4</sup>—*Postea, termino Trinitatis, anno xvj<sup>o</sup>, R. Thorpe*. Nous demandons jugement, desicome il demande fee simple, et par accion est a la comune ley, et lestatut ne oevre forsque par accions qe sont dones par statut, et issi est garrantie a la comune ley; par quei nous prioms seisine sur la forfaiture son auncestre, [qe,] tout fust il tenant en taille, barreit celui en le *reverti*.—*W. Thorpe*. Jammes, sil ne demanda de sa seisine ou fait descente par lui; et nous sumes rien en tiel cas; et le statut restreint le meschief de la comune ley, et doune le recoverir owelment pur ses en le *reverti* et ses en la descender.—*SCH*. Sur le meschief fust lestatut fait; ore le meschief fust tiel, qe maintenant apres issu tenantz en la taille poaint, par lour demise, si avant sauns fet come par fet, disheriter lour issues et ses en la descente; par quei il semble qe lestatut fust fait forsque a restreindre les alienacions et noun pas especiales covenantz de cost.—*W. Thorpe*. A vostre dit, celui en le descente serreit barre par la garrantie celui en la taille.—*SCH*. Poet estre; qar *HILL*. et moi pledames tiel plee devant *SCROPE* en leir de Northamtone, pur ceo qe avoms nule autre matere, et pendency tout leyr, et

<sup>1</sup> T., en fee.<sup>2</sup> T., durreit.<sup>3</sup> L., esteynt.<sup>4</sup> In L. and 16,560 the report ends here, the words *et adjornan-**tur* only being added. In the margin of L. appear in a later hand the words *Vide residuum in a[lio] libro*.

## No. 55.

A.D. 1841. whole of the Eyre, and then was adjourned to this Court, and was pending before HERLE, and he said that the strongest argument against us which he knew was that HENGHAM, who drew the Statute, construed it in another way; and afterwards the demandant was nonsuited; and if such a plea in the descender had been used since the making of the Statute,<sup>1</sup> it would be good enough.—*W. Thorpe*. Certainly it would not be; for if the alienation were made by fine with warranty, the fine would be null by the express words of the Statute; and if the fine would be void, by consequence the warranty depending on the same fine would be annulled, for it could not be in part void and in part not void; *a multo fortiori* would a feoffment be void.—*Derworthy*. He in the line of descent shall warrant by virtue of the deed of his ancestor, and on entering into warranty his action will be saved to him by protestation; but an action for the fee simple shall never be saved by protestation; wherefore warranty is not equally charging against him in the line of descent and against him in the reversion.—*W. Thorpe*. What you say is wrong; in the case of the Statute of Gloucester,<sup>2</sup> when the father alienes the heritage of the mother, the heir shall warrant the fee simple and save to himself his action; and so here. And for that reason the issue in tail will discharge in case of a rent charge, and also will have recovery if his ancestor lost by default.—*STONORE*. Warranty is not like any other case.—*PARNING*. By Statute<sup>1</sup> the mischief is alleged, and the remedy provided equally for those in reversion as for those in the line of descent; why then does the warranty operate more strongly to rebut one than the other from an action? — *Pole*. We understand

<sup>1</sup> 13 Edw. I. (Westm. 2), c. 1. (*de donis conditionalibus*).

<sup>2</sup> 6 Edw. I. (Stat. Glouc.), c. 3.

## No. 55.

puis fust ajourne ceinz, et pendist devant HERLE, et il A.D. 1341. dist qe la plus fort resoun qil savoit contre nous ceo fust qe HENGHAM, qe fist lestatut, lusa en autre manere; et puis le demandant fust nounsuy; et sil<sup>1</sup> ust este use puis la confeccion de lestatut tiel plee en la descendre, il serreit assetz bon.—*W. Thorpe*. Certes noun serroit; qar si lalienacion fust fait par fyne ove garrantie, la fyne serreit nule par expresse parole de statut; et si la fyne serreit voide, *ergo* la garrantie dependant sur mesme la fyne serreit anyenti, qar ele ne purreit estre voide en partie et en partie nient; a mout pluis fort feffement.—*Derworth*. Celui en la descente garrantira par le fet son auncestre, et sur lentre en la garrantie saccion lui serra saufve par protestacion; mes de fee simple serra jammes accion saufve par protestacion; par quei garrantie nest pas owelment chargante vers celui en la descente et celui en le *reverti*.—*W. Thorpe*. Vous dites mal; en cas de statut de Gloucestre, ou le pere<sup>2</sup> aliene leritage la mere, leir garrantera fee simple et saufvera a lui saccion; et auxi issi. Et pur quei deschargera lissu en taille en cas de rente charge, et auxi avera recoverir si son auncestre perdi par defaute.—*STON*. Garrantie nest semblable a nul autre cas.—*PARN*. Owelment par statut est le meschief allege, et remedie ordeigne pur ses en *reverti* come par ses en la descente; pur quei oure la garrantie pluis fort donques de reboter lun et lautre?—*Pola*. Entendoms chescune garrantie estre barre

<sup>1</sup> T., cel.| <sup>2</sup> T., primer pere.

## No. 56.

A.D. 1341. that every warranty is a bar in fee simple, if it be not expressly restrained by Statute, as it is in the case of the Statute of Gloucester and the Statute *de donis conditionalibus*, but only after issue born, so that alienation before issue born is not restrained; and it is not alleged by them that there was issue. Besides, the younger son, or the elder, during the life of his ancestor, releases with warranty of the issue.—PARNING. I doubt it; at common law a tenant in tail had no higher estate than he has now, nor any higher estate against those in reversion than against those in the line of descent; and the Statute enures equally for one and for the other as to recovering land aliened by a tenant in tail; wherefore, &c.—*R. Thorpe*. If a tenant in tail purchase a release from the donor, he can disinherit those in reversion, and not those in the line of descent.—PARNING. Pole, that would not be by warranty, but because he had a fee simple. He could not aliene and extinguish the fee tail.

Præcipe  
quod  
reddat.

(56.) § A *Præcipe* against Joan, who was the wife of Thomas de la Rivere.—*R. Thorpe*. We tell you that the same person who now demands heretofore brought a like writ in respect of the same tenements against John the son of Thomas de la Rivere, returnable at the Octaves of St. Michael in the tenth year of the present King, which John then vouched Thomas and Joan his wife, against whom the writ is now brought; process on the voucher was continued until Thomas died, wherefore the tenant revouched this same Joan, which voucher is still pending; judgment of this writ, which supposes Joan to be tenant.—*Blak*. The law does not put me to answer to that; and since you do not deny that you are tenant of the freehold, judgment, and we pray seisin.—*SCHARDELLOWE*. If you were tenant by your warranty, and had

## No. 56.

en fee simple, si ele ne soit expressement restreint par statut, come en cas destatut de Gloucestre et lestatut *de donis conditionalibus*, mes apres issu, issi qe lalienacion devant issu nest pas restreint; et ceo nest pas allege deux qil iavoit issu. Ovesqe ceo, le puisne fitz, ou leisme, vivant son auncestre, relest ove garrantie lissu.—PARN. Jeo le doute; a la comune ley tenant en la taille avoit nient pluis haut estat qil nad ore, ne nient pluis haut estat vers ses en le reverti qe ses en descende; et lestatut oevre owelment pur lun et lautre quant a recoverir terre aliene par tenant en la taille; par quei, &c.—*R. Thorpe*. Si celui en taille purchace relees del donour, il poet disheriter ses en *reverti*, et noun pas en la descende.—PARN. Pole, ceo ne serra pas par garrantie, mes pur ceo qil avoit fee simple. Il ne purreit aliener et esteindre.

(56.)<sup>1</sup> § *Præcipe* vers Johane, qe fust la femme Thomas de la Rivere.—*R. Thorpe*. Nous vous dioms qe mesme celui qore demande autrefoitz porta autiel bref de mesmes les tenementz vers Johan le fitz Thomas de la Rivere, retournable as utaves de Saint Michel lan x. le Roi qor est, quel Johan voucha Thomas et Johane sa femme adonques, vers qi le bref est ore porte; proces continue sur le voucher tanqe Thomas morust, par quei le tenant revoucha mesme ceste Johane, quel voucher pent uncore; jugement de ceo bref, qe suppose Johane estre tenant.—*Blayk*. A ceo ley [ne] moi mette a respondre; et del heure qe vous ne dedites pas qe vous nestes tenant du frank tenement, jugement, et prioms seisine.—*SCHARD*. Si fuisses tenant par vostre

*Præcipe*  
quod  
reddat.

<sup>1</sup> From T. alone.



## No. 57.

A.D. 1341. warranted to the tenant for the same subject of demand, it would be something; but although you be vouched you are a stranger, so far as appears at present; wherefore, will you say anything else?—*R. Thorpe*. We are privy to the demandant in the plea; for against him we shall be essoined.—*SCHARDELOWE*. Answer.

*Quare  
impedit.*

(57.) § The King brought his *Quare impedit* against the Bishop of London in respect of the prebend of Oxgate, in the church of St. Paul of London, and the writ was directed to the Sheriffs of London, and the writ was in the form "by reason of the Bishopric, &c.," and not "by reason of the temporalities, &c."; and now exception was taken to it, and as to that point the writ was adjudged good.—*Pole*. We tell you that Oxgate, from which the prebend takes its name, is in the county of Middlesex; judgment of this writ, which is brought in a county other than that in which the prebend is.—*Thorpe*. The prebend is in the chief church, and execution will be had there; and even

No. 57.

garrantie, et usses garranti al tenant de mesme la demande, ascune chose serreit; mes tout soiez vous vouche vous estes estrange, a ceo qe semble uncore; par quei, volez autre chose dire?—*R. Thorpe*. Nous sumes prive al demandant en le plee; qar devers lui serroins essone.—*SCHARD*. Respondez. A.D. 1341.

(57.)<sup>1</sup> § Le Roi porta soun *Quare impedit* vers levesqe de Loundres de la provandre de Oxgate, en leglise Seint Paul de Loundres, et le bref fust direct a Vicountes de Loundres, et le bref fust *ratione Episcopatus, &c.*<sup>2</sup> [et noun pas *ratione temporalium, &c.*; et ore fust chalenge],<sup>3</sup> et quant a cel point le bref agarde bon.—*Pole*. Nous vous dioms qe Oxgate, dont la provandre prent noun, est en le counte de Middel-sexe; jugement de ceo bref, qest porte en autre counte qe la ou<sup>4</sup> la provandre nest.<sup>5</sup>—*Thorpe*. La provandre est en la chief eglise, et illoeques serra execucion

*Quare impedit.*  
[*Kitz.*  
*Briefe,*  
325.]

<sup>1</sup> From T., L., and 16,560. The record is among the *Placita de Banco*, Mich., 15 Edw. III., R. 365. Compare No. 58 of Easter Term, 15 Edw. III.

<sup>2</sup> i.e., as appears by the record, "ratione Episcopatus Londoniensis nuper vacantis et in manu Regis existentis."

<sup>3</sup> The words between brackets are in T. alone.

<sup>4</sup> The words la ou are in T. alone.

<sup>5</sup> The words of the plea, according to the record, were "quod Præbenda de Oxgate habet nomen suum de manerio de Oxgate, quod est grossum et corpus præbendæ prædictæ, et quod est in Comitatu Middelsexie. Et ex quo dominus Rex tulit breve istud

"Vicecomitibus Londoniarum directum de præbenda prædicta de Oxgate, non intendit quod dominus Rex ad istud breve respondere velit, &c." Upon this there was an adjournment. On the day named judgment was given:—"Quia prædictum breve de *Quare impedit* pro domino Rege latum est Vicecomitibus Londoniarum, ubi corpus prædictæ præbendæ est in Comitatu Middelsexie, et visum est Curie quod ubi corpus prædictæ præbendæ est breve de *Quare impedit* in eodem Comitatu impetrandum est, consideratum est quod prædictus Episcopus eat inde sine die, salvo jure Regis, &c."

## No. 57.

A.D. 1341. though the prebend bears the name of a manor which is annexed to the prebend, it is not established that the writ should be brought there.—HILLARY. The King, in a like case, took another writ by reason of a like exception in the King's Bench.—*Thorpe*. There the prebend bore the name of the church of Oure, which was in another county, and that was properly the prebend; but Oxgate, which is a manor and lay fee, can not be a prebend; for if the prebendary were ousted from that manor, he would have an assise as prebendary, supposing the name and the prebend to remain notwithstanding the disseisin, &c.—HILLARY. There is a prebend of York in Devonshire, and shall not the writ of *Quare impedit* be brought in Devonshire? Certainly it shall, of necessity.—*Thorpe*. Nothing is now to be recovered in the county of Middlesex, except that the Ordinary do execution, and that he shall do where the chief church is.—*Blak*. Where a writ of Right shall be brought, there shall a *Quare impedit* be brought, and not elsewhere.—HILLARY. It has been usual to bring the writ where the prebend is.—BASSET. If the King were at issue, to what Sheriff would a writ be sent to cause a jury to come?—*Thorpe*. Rightly to the Sheriffs of London; for there they would know best concerning the vacancy.—HILLARY. The law in use has always been to bring the writ where the body of the prebend is.—They were adjourned to Hilary Term following.—HILLARY. We

## No. 57.

fait; et tout porte la provandre noun dun manoir qest A.D. 1341  
 annex a la provandre, il nestut<sup>1</sup> pas qe bref soit porte  
 illoeqes.—HILL. Le Roi, en autiel cas, prist autre bref  
 pur tiel chalange en Bank le Roi.—*Thorpe*. La porta  
 la provandre<sup>2</sup> noun deglise Oure,<sup>3</sup> qe fust en autre  
 counte, et ceo fust proprement la provandre; mes  
 Oygate, qest un manoir et<sup>4</sup> lai fee,<sup>5</sup> ne poet estre  
 provandre; qar si le provandrer fust ouste de cel  
 manoir, il avereit assise come provandrer, en suppo-  
 sant le noun et la provandre demorer *non obstante* la  
 disseisine, &c.—HILL. Il y ad une provandre Dever-  
 wyk en Devenshire, et ne serra le bref de *Quare*  
*impedit* porte en Devenshire? Certes<sup>6</sup> si serra, a  
 force.—*Thorpe*.<sup>7</sup> Rien est a recoverir a ore en la  
 counte de Middelsexe, mes qe Ordiner face execucion,  
 et ceo fra il ou<sup>8</sup> le chief eglise est.<sup>9</sup>—*Blayk*. La ou  
 bref de dreit serra porte, la serra le *Quare impedit*  
 porte, et noun pas aillours.—HILL.<sup>10</sup> Issi soleit estre  
 qomme portereit bref la ou la provandre est.—BASSET.<sup>11</sup>  
 Si le Roi fust a issue, a quel Vicounte mandreit<sup>12</sup>  
 homme bref de faire venir pais?—*Thorpe*. Par resoun  
 a Vicountes de Loundres; qar la saveraieit il meutz<sup>13</sup>  
 de la voidance.—HILL. Touz jours ad este ley use de  
 porter bref ou le corps de la provandre est.<sup>14</sup> Ad  
 jour *usque terminum Hillarii proximo sequentem*.—

<sup>1</sup> T., nestoet.<sup>2</sup> L., il, instead of la provandre.  
The words are omitted from 16,560.<sup>3</sup> L., Oire or Cire.<sup>4</sup> L., par.<sup>5</sup> T., layte; 16,560, laite instead  
of lai fee.

Certes is in T. alone.

L., *Stouf*.<sup>6</sup> L. and 16,560, en.<sup>7</sup> est is in T. alone.<sup>10</sup> HILL. is omitted from T.<sup>11</sup> L., *Blaik*.<sup>12</sup> L. and 16,560, avereit.<sup>13</sup> T., meuez.<sup>14</sup> The report ends here with the  
word *adjournantur* in L. and 16,560.

## No. 58.

A.D. 1341. have agreed that the writ should be brought where the body of the prebend is; wherefore, adieu, Bishop, as to this writ.

Darrein  
Present-  
ment.

(58.) § *Thorpe* made the title that one Nicholaa was seised of the advowson, and presented him through whose death the church is vacant, and before him two others. From Nicholaa the descent was to the plaintiff.

## No. 58.

HILL. Nous avoms parle ensemble qe le bref serreit A.D. 1341.  
 porte ou le corps de la provandre est; par quei,  
 Levesqe, adieu a ceo bref.

(58.)<sup>1</sup> § *Thorpe* fist le tittle qun Nicole fust seisi  
 del avoesoun, et presenta celui par qi mort leglise est  
 voide, et devant lui autres deux; de N. descendi al

Darreyn  
Presente-  
ment.  
[Fitz.  
Darrein  
Present-  
ment, 11.]

<sup>1</sup> From T., L., and 16,560. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 381. It there appears that the action was brought by William de Burton and Elizabeth his wife against William de Northoo in respect of presentation to the church of Shipley (Sussex). The plaintiffs alleged that one Nicholaa de Hantentoft, mother of Elizabeth, whose heir she is, was seised, and presented Walter Eusyndon, who was thereupon admitted and instituted, upon whose death the church is vacant, and that on the next preceding vacancy she presented Roger de Leycester, and on the vacancy before that Peter de Angemeryng. The defendant's plea was that one William de Hantentoft and Isabella his wife were seised of the manor of Wodemancote and other tenements and of the advowson, as of the right of Isabella, and presented Richard Atte Grove, who, &c., in the time of Hen. III. From them the manor, &c., and advowson descended to Thomas as son and heir. On the vacancy of the church by the death of Atte Grove, Thomas presented Richard Beausits, who, &c., in the time of Edw. I. On Thomas's death "sine herede de se,"

the manor, &c., and advowson descended to the aforesaid Nicholaa, and Lucy, and Olive, as sisters and heirs, between whom partition was made of the manor and other tenements, "et advocatio prædicta remansit eis in communi videlicet præsentandi per turnum." On the resignation of R. Beausits, Nicholaa presented Peter Potyng, whom the plaintiffs call Peter de Angemeryng, who, &c. On Peter's death "Lucia negligens fuit et remissa, et prædicta Nicholaa, nupsit super ius ipsius Lucie," presented Roger de Leycester, who, &c. Afterwards Lucy died without heir "de se," and the right of her purparty descended to Nicholaa and Olive. Afterwards Olive married one William de Northoo, and their issue was William de Northoo, against whom the assise is arraigned. Olive died, and on the resignation of Roger "idem Willelmus pater, &c., tenens pro partem ipsius Olive per legem Anglie" presented Michael Curteys, who, &c. On the death of William de Northoo his father "idem Willelmus de Northoo" entered on Olive's purparty as son and heir, "et eam tenet in pro partem cum prædicto Willelmo de Burton et Elizabeth

## No. 58.

A.D. 1341. And he prayed the assise.—The defendant showed that he held in parcenary with the plaintiff, and said how that the advowson was in the seisin of one Isabel, who presented, from whom it descended to Nicholaa,

" filia prædictæ Nicholæ, &c. Unde  
 " petit iudicium si inter ipsos qui  
 " sunt participes de sanguine . . .  
 " huiusmodi breve assise jaceat  
 " seu manuteneri possit, &c." The  
 plaintiffs in their replication admit  
 the seisin of the manor of Wode-  
 mancote and other tenements, and  
 of the advowson by William de  
 Hautentoft and Isabella in right of  
 Isabella, but say that the advowson  
 is and then was "pertinens ad ma-  
 " nerium illud," and they admit  
 the descent from William and Isa-  
 bella to Thomas, and from Thomas  
 to Nicholas, Lucy, and Olive, and  
 the presentations made by Olive  
 but say that, after the death of  
 Thomas, the said Nicholaa "sola  
 " intravit in prædicto manerio ad  
 " quod advocatio ecclesiæ prædictæ  
 " pertinet," and into other the tene-  
 ments of Thomas, and was seised,  
 and during her seisin Lucy by her

" scriptum" released to Nicholaa  
 and her heirs all Lucy's purparty.  
 " Et postmodum inter prædictos  
 " Willelmum de Northo patrem  
 " prædicti Willelmi de Northo et  
 " Olivam uxorem ejus ex una parte  
 " et prædictam Nicholaam ex al-  
 " tera convenit, videlicet de propor-  
 " tia ipsam Olivam contingente de  
 " hereditate prædicti Thomæ, &c.,  
 " scilicet de maneriis de Wodeman-  
 " cote [&c.] . . . . . ita quod  
 certain tenements (not including  
 the manor of Wodemancote) "re-  
 " manerent eisdem Willelmo de  
 " Northo et Olivæ pro tota pro-  
 " portia ipsius Olivæ . . . . et  
 " omnia alia maneria terræ et te-  
 " nementa et redditus . . . .  
 " ipsi Nicholæ remanerent in per-  
 " petuum." Profert was made of  
 the "scriptum" testifying the last  
 mentioned agreement. "Unde pe-  
 " tunt iudicium (ex quo prædic-

## No. 58.

pleintif. Et pria assise.<sup>1</sup>—Le defendant moustra qil A.D. 1341.  
tient en parcenerie ove le pleintif, et dit coment lavoe-  
soun fust en la seisine une Isabele,<sup>2</sup> qe presenta, de qi

"tum manerium de Wodemancote,  
"ad quod advocatio ecclesie præ-  
"dictæ pertinet, virtute scripti illius  
"et conventionum in eodem con-  
"tentarum, remansit penes præ-  
"dictam Nicholaam matrem ipsius  
"Elizabeth, &c., et sic ipsa Nicho-  
"laa sola advocata ejusdem eccle-  
"siae extitit, et iidem Willelmus  
"de Burtone et Elizabeth, ut in  
"jure ipsius Elizabeth, de eodem  
"manerio ad quod, &c., seisiti sunt  
"et soli advocati existunt) si hoc  
"breve assise ultimæ præsentationis  
"inter eos in hoc casu non  
"jaceat." In his rejoinder the  
"defendant does not deny the "scrip-  
"tum" or "conventiones præ-  
"dictas," but says that in the  
"scriptum" there is no mention  
"of the advowson, but only "de aliis  
"maneriis et tenementis quæ fue-

"runt prædicti Thomæ, &c., et sic  
"dicit quod advocatio illa remansit  
"prædictis Nicholæ et Willelmo  
"de Northo patri, &c., et Olivæ, ut  
"in jure ipsius Olivæ, in communi,  
"&c." And whereas the plaintiffs  
try to attain to the assise by  
asserting that the advowson was  
"pertinentem" to the manor of  
Wodemancote, he says that the  
advowson is not nor was at the  
time of the making of the "scrip-  
tum," "pertinens" to that manor.  
In their surrejoinder the plaintiffs  
say that the church was "perti-  
nens a tempore quo non extat  
"memoria." On this issue was  
joined. "Ideo capiatur assisa."  
There were several adjournments,  
but no decision appears on the roll.

<sup>1</sup> L. and 16,560, seisine.

<sup>2</sup> L. and 16,560, A.



## No. 58.

A.D. 1341. F., and K.,<sup>1</sup> as to daughters, and that they made partition of other lands, and the advowson remained to them in common to present by turns, and Nicholaa presented one D.<sup>1</sup> at the first turn, and afterwards, usurping on F.'s turn, presented one C.;<sup>1</sup> and afterwards one W.,<sup>1</sup> the husband of K. our mother, whose heir we are, as tenant by the curtesy of England, presented in our right one E.<sup>1</sup> and thus we are parceners and hold in parcenary; judgment whether the writ lies between us.—*Thorpe*. You have admitted that the common ancestor was seised, and that from him it descended to Nicholaa and the other parceners in common, and you do not allege any composition whereby they were to present by turns, and so the two presentations by Nicholaa put the others out of possession; judgment, and we pray the assise.—*HILLARY*. By common right, without composition, parceners present by turns.—*Thorpe*. Not so, but in common; for against their disturber they will, before composition, have a *Quare impedit*, and recover in common.—*HILLARY*. True; they will recover in common against a stranger; but between themselves they will present by turn, for otherwise one might disturb the others without means of recovery.—*Stouford*. If a stranger, after the death of the ancestor, had presented, all the parceners would be out of possession. For the same reason if one parcener, who has not a several right to present, presents twice, she puts the others out of possession.—*HILLARY*. You can not make out a resemblance between a presentation by a privy, whose usurpation discontinues neither the right nor the possession in the blood, and a presentation by a stranger, who by usurpation becomes sole patron, and puts the possession out of the blood. And I well know that, without

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<sup>1</sup> For the real names see note, p. 401.

## No. 58.

descendi a Nicole, F., et K., come a filles, et il firent A.D. 1341  
 purpartie des autres terres, et lavoiesoun demora en  
 comune a presenter par tourn, et Nicole presenta un  
 D. en comenceant<sup>1</sup> tourn,<sup>2</sup> et puis, purpernant en le  
 tourn, F. presenta un C.; et puis un W., baroun K.  
 nostre mere, qi heir nous sumes, come tenant par la  
 ley Dengleterre, presenta en nostre dreit un E., et issi  
 sumes parceners et tenoms en parcenerie; jugement  
 si le bref entre nous gise.<sup>3</sup>—*Thorpe*. Vous avez conu  
 que le comune auncestre fust seisi, et de lui descendist  
 a Nicole et les autres parceners en comune, et vous  
 naleggez pas composicion par quei il duissent presenter  
 par tourn, et issi les ij. presentements de Nicole mis-  
 trent les autres hors de possession; jugement, et prioms  
 lassise.—*HILL*. De comune dreit, sanz autre compo-  
 sicion, parceners presentent par tourna.—*Thorpe*. Nanyl,  
 mes en comune; qar vers lour<sup>4</sup> destourbour il averont  
*Quare impedit*, et recoverount en comune avant compo-  
 sicion.—*HILL*. Cest verite; il recoverount en comune  
 vers estrange; mes entre eux il presenteront [par  
 tourn, qar autrement un destourbereit autres<sup>5</sup> sanz  
 recoverir.—*Stouf*. Si estrange, apres la mort laun-  
 cestre, ust presente],<sup>6</sup> touz les parceners serront hors  
 de possession. Par mesme la resoun si une parcenere,  
 que navoit pas several dreit a presenter, presente  
 ij. foitz, ele myst les autres hors de possession.  
 —*HILL*. Vous ne poez pas faire ensample entre  
 presentement de prive, qi purprise ne discontinue pas  
 le dreit ne la possession en le sank, et destrange que  
 par<sup>7</sup> purprise devient soul avowe, et met la possession  
 hors del sank. Et jeo say bien que, sanz composicion, si

<sup>1</sup> 16,560, comune.<sup>2</sup> L. and 16,560, frank tourn.<sup>3</sup> L., ygise.<sup>4</sup> The words vers lour are not

in L.

<sup>5</sup> 16,560, un autre.<sup>6</sup> The words between brackets  
are not in T.<sup>7</sup> par is in T. alone.

## No. 58.

A.D. 1341. a composition, if an advowson descend to three parceners, the eldest shall have the first presentation, the middle one the second, and the youngest the third; and if the eldest present twice, usurping on the middle one, and the youngest afterwards present at the third turn, that presentation shall be adjudged to be by way of parcenary.—*Thorpe*. I think that, before composition, any one of them who presents by herself puts the others out of possession; for, when the advowson remains in common, a writ of Right shall be brought in common against them, and, while the advowson is in common, they present in common; but if a partition be afterwards made, so that they are to present by turns, then the advowson is severed, and a several writ shall be brought against each in respect of her portion, as well as against a woman who is tenant in dower and the heir.—*HILLARY*. Certainly the advowson, notwithstanding the composition, remains in common between the parceners.—*Stouford*. As between strangers, who are purchasers of an advowson, a presentation by one by himself, without composition, puts the others out of possession; and the same reason holds good between parceners, if it be not restrained by the Statute,<sup>1</sup> which mentions usurpation between parceners, and that Statute is operative after composition.—*BASSET*. The Statute is operative also before composition, and a good count shall be had between parceners in a *Quare impedit* by one alone, altogether without composition.—*HILLARY*. That is true.—*Thorpe*. He has admitted that Nicholas presented twice, which put the others out of possession, even though the advowson descended, &c., in the manner that we do not admit, and have no need to, since he does not allege a composition; and he has not denied that we presented the last parson; wherefore we pray an assise for

<sup>1</sup> 13 Edw. I. (Westm. 2), c. 5.

## No. 58.

avoessoun descend a iij. parceners, leissesse<sup>1</sup> avera le A.D. 1341. primer presentement, et la milveyne<sup>2</sup> le secunde, et la puisnesse<sup>3</sup> le terce; et si leissesse<sup>1</sup> presente ij. foitz, purpernant sur la milveyne,<sup>3</sup> et la terce puis presente al terce tourn, cel presentement serra ajuge par voie de parcenerie.—*Thorpe*. Jeo crey<sup>4</sup> qe avaunt composicion qe qi deux presente a per lui met autre hors de possession; qar, quant lavoessoun demoert en comune, bref de dreit serra porte en comune vers eux, et, esteaunt lavoessoun en comune, il presentent en comune; mes si purpartie se face apres par tourn, donques est lavoessoun severe, et vers chescun serra several bref porte de sa porcion, auxi bien come vers femme tenante en dower et leir.—*HILL*. Certes lavoessoun, *non obstante* composicion, demoert en comune entre parceners.—*Stouf*. Entre estranges, purchaceours davoessoun, presentement par un a per lui, sanz composicion, met les autres hors de possession; et mesme la resoun il y ad entre parceners, sil ne soit restreint par statut, qe parle<sup>5</sup> de purprise entre parceners [et cel estatut overe apres composicion.—*BASSET*. Auxi overe estatut avant composicion, et homme avera bon counte entre parceners]<sup>6</sup> en *Quare impedit* par un soul,<sup>7</sup> tout<sup>8</sup> sanz composicion.—*HILL*. Cest verite.—*Thorpe*. Il ad conu qe Nicole presenta ij. foitz, quel mist les autres hors de possession, tout descendi lavoessoun, &c., come nous ne conisoms pas, ne navoms mestier, del houre qil nalegge composicion; et<sup>9</sup> il nad pas dedit qe nous presentames la dareine persone; par quei nous prioms lassise pur

<sup>1</sup> 16,560, levesqe.<sup>2</sup> L., mulvesse.<sup>3</sup> T., puisnesce; 16,560, puisnese.<sup>4</sup> T., crai; L., croy.<sup>5</sup> L. and 16,560, par quel instead of qe parle.<sup>6</sup> The words between brackets are not in T.<sup>7</sup> 16,560, soude.<sup>8</sup> T., tenant.<sup>9</sup> et is in T. alone.

## No. 58.

A.D. 1341. damages.—*Pole*. Do you intend that to be your answer?  
 —*Thorpe*. We will imparl.—And afterwards he came back and said, It is very true that the advowson, but as appendant to the manor of S.,<sup>1</sup> was in the seisin of Isabel, as ancestor, &c., who presented; from her the inheritance descended to T., as son, from whom it descended to Nicholaa, who brings the assise, and F. and K., as to sisters, &c.; and Nicholaa entered upon the entire inheritance, and while it was in her seisin F., her sister, released all her right by this deed; and afterwards partition was made between Nicholaa and K., and J. her husband, so that the manor of S., to which the advowson is appendant, &c., was allotted as the purparty of Nicholaa in satisfaction, &c.—(and he produced a deed testifying the partition);—and you have admitted that she presented twice, and have not denied that she presented the last parson, and thus she is sole patron; judgment, and we pray the assise for the damages.—*Pole*. First of all he made his title supposing the advowson to be in gross, and now he supposes it to be appendant, &c.; judgment whether he shall be admitted.—*HILLARY*. When he makes a title, it is not necessary that he say whether it be in gross or appendant; wherefore he shall be admitted well enough, &c.—*Gayneford*. We tell you that whereas he says that Isabel, the common ancestor, was seised of the advowson as appendant, and that from her it descended to T., from whom it descended to Nicholaa and her co-parceners, we tell you that the common ancestor was seised of the advowson as of one in gross, and they have admitted that from T. the son of Isabel, the common ancestor, it descended to Nicholaa and her co-parceners, and the partition that they speak of was only of certain manors and rents, and not of the advowson, since it was not appendant; and thus the advowson

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<sup>1</sup> See note, p. 409.

## No. 58.

damages.—*Pole*. Ceo volez pur respons?—*Thorpe*. Nous A.D. 1341. enparleroms.—Et puis revient et dit qe bien est verite qe lavoësoun, mes<sup>1</sup> come appendant al manoir de S., fust en la seisine Isabele,<sup>2</sup> come auncestre, &c., qe presenta; de qi descendi leritage a T., come a fitz, de qi descendi a Nicole, qe porte lassise, et F. et K., come a soers, &c.; et Nicole entra en leritage entier, en qi seisine F., sa soere, relessa tout son dreit par ceo fet; et puis purpartie se fist entre Nicole et K., et J. son baroun, issi qe le manoir de S., a qi lavoësoun est apendant, &c., fust alote a la purpartie Nicole en allowance, &c.; et mist avant fet tesmoignant la purpartie; et vous avez conu qele<sup>3</sup> presenta ij. foitz, et navez pas dedit qele ne presenta la dareine persone, et issi est ele soule avowe; jugement,<sup>4</sup> et prioms assise de damages.—*Pole*. Primes fist il son tittle supposant lavoësoun estre un gros, et ore il la suppose estre appendant, &c.; jugement sil serra resceu.—*HILL*. Quant il fait tittle, il ne bosoigne pas qil die sil soit gros ou appendant; par quei il avendra assetz bien, &c.—*Gayn*. Nous vous dioms qe la ou il dit qe Isabele, la comune auncestre, fust seisi del avoësoun come appendant, et de lui descendist a T., de qi descendist a Nicole et ses parceners, nous vous dioms qe la comune auncestre fust seisi del avoësoun come dun gros, et ils ount conu qe de T. fitz Isabele, la comune auncestre, descendist a N. et a les parceners, et ceo qil parlent de purpartie ceo neest forsque de certains manoirs et rentes,<sup>5</sup> et noun pas del avoësoun, del heure qele ne fust pas apendant; et issi

<sup>1</sup> mes is not in L.<sup>2</sup> L., A.<sup>3</sup> L., qe le plaintiff.<sup>4</sup> jugement is in L. alone.<sup>5</sup> The words et rentes are not in L.

## No. 58.

A.D. 1341. remained in common between the parceners, and by the presentation by N., the eldest sister, the turn was vested, and also by the usurpation afterwards on the turn of the middle sister, and then the turn was vested in our right by the presentation by the tenant by the curtesy of England in our right, and thus we are in the estate of a parcener; judgment of the writ.—*Thorpe*. Whether the advowson of the church be in gross or appendant, that is only a matter for protestation, for that can not make an issue on this writ; and you see clearly that they have not denied the partition according to the purport of the deed which we have produced, by which it is proved that K., their mother, took certain lands and rents for the whole of her purparty of the inheritance of T., their brother, and thus the advowson remained to Nicholaa, whether it was in gross or appendant; and they have admitted the last presentation; judgment, and we pray the assise for the damages.—*Pole*. The deed purports that K. took certain lands in satisfaction of her purparty of certain manors, and also that N. took other lands in satisfaction of her purparty, and thus the advowson, of which no mention was made, if it was in gross, which they do not deny, remained in common, and by the presentations, as above, was vested in turn, and thus we hold in parcenary; judgment of the writ.—*Thorpe*. They say that the common ancestor held the advowson as in gross, and they do not deny that at some time it was appendant, and do not show how it was severed and became in gross afterwards, whereas it is necessary by law to traverse generally by saying Not Appendant, or to admit the appendancy and show by a cause that it afterwards became in gross.—*Pole*. We are only charged with its being appendant for a certain time, that is to say, in the time of the common

## No. 58.

demora lavoessoun en comune entre les parceners, et A.D. 1347. par le presentement N., eissesse<sup>1</sup> soere, tourn vestue,<sup>2</sup> et auxi par<sup>3</sup> purprise puis sur le tourn la milveyne<sup>4</sup> soere, et puis vestue en nostre dreit<sup>5</sup> par presentement le tenant par la ley Dengleterre en nostre dreit, et issi sumes en estat de parcenier; jugement du bref.—*Thorpe*. Le quel lavoessoun del eglise soit un gros ou appendant, ceo nest forsque protestacion, qar ceo ne poet pas faire issu en ceste bref; et vous veiez bien coment il nont pas dedit la purpartie solonc purport del fet quel nous avoms mys avant, par quel est prove qe K., lour mere, prist certeinz terres et rentes pur toute sa purpartie del heritage T., lour frere, et issi demora lavoessoun a N., fust ceo gros ou appendant; et ils ount conu la dareine presentement; jugement, et prioms assise des damages.—*Pole*. Le fet voet qe K. prist certeinz terres en allowance de sa purpartie de certeinz manoirs, et auxi qe N. prist autres terres en aallowance de sa purpartie, et issi lavoessoun, de quei nule mencion est fait, si ele fust gros, quele chose il ne dedient pas, demora en comune, et par les presentements, *ut supra*, vestue en tourn, et issi tenoms<sup>6</sup> en parcenerie; jugement du bref.—*Thorpe*. Il dient qe la comune auncestre tient lavoessoun come un gros, et il ne dedient pas qen ascun temps ele fust appendant, et ne moustrent pas coment ele fust severe et devient gros puis, ou il covient par ley<sup>7</sup> traverser generalment qe nient appendant, ou conustre lappendance et moustrer par cause gele est<sup>8</sup> puis devenue<sup>9</sup> destre un<sup>10</sup> gros.—*Pole*. Nous sumes charge forsque de certein temps gele fust appendant, saver, en temps la comune auncestre, quele chose

<sup>1</sup> 16,560, eygnesse.<sup>2</sup> 16,560, vesture; L., usurps.<sup>3</sup> par is in T. alone.<sup>4</sup> L., mulvesse.<sup>5</sup> L., demande.<sup>6</sup> T., ne tenoms.<sup>7</sup> The words par ley are in T. alone.<sup>8</sup> est is in T. alone.<sup>9</sup> L. and 16,560, devint.<sup>10</sup> T., come instead of destre un.



## No. 59.

A.D. 1341. ancestor, and that we have traversed, and that is enough for us.—And afterwards they were at issue generally whether the church was appendant or not.

Writ of (59.) § Intrusion, on the seisin of the demandant's  
Intrusion, grandfather, supposing that the tenant abated after  
In Intru- the death of one G., his tenant in dower.—*Pole.* We  
sion the

## No. 59.

nous avoms traverse, et ceo nous suffist.—Et puis sont A.D 1341.  
a issu generalment si leglise fust appendant ou noun.

(59.)<sup>1</sup> § Intrusion, de la seisine laiel le demandant, Bref de  
Intrusion.  
supposant qe le tenant abatist apres la mort un G., En Intru-  
sion le de-  
sa tenante en dower.—*Pole*. Nous vous dioms qun

<sup>1</sup> From T., L., and 16,659, except the portion of the marginal note beginning with the words "En intrusion," which is from L. alone. The record of this case is among the *Placita de Banco*, Mich., 18 Edw. III., R. 359, d. It there appears that the action was brought by Thomas son of John Maunsel of Tirlington, against Dionysia late wife of Richard Maunsel of Tirlington, in respect of a third part of tenements in Tirlington [Tur-Langton?] in the county of Leicester, into which Dionysia had not entry, "nisi per intrusionem quam in illam fecit post mortem Gunnildæ quæ fuit uxor Maunselli de Tirlyngtone, quæ illam tenuit in dotem de dono prædicti Maunselli quondam viri sui, avi prædicti Thomæ, cujus heres ipse est, &c." The count was that the aforesaid Maunsel was seised, &c., "et de ipso Maunsello descendit jus, &c., cuiusdam Johanni ut filio et heredi, &c., et de ipso Johanne descendit jus, &c., isti Thomæ ut filio et heredi, &c." In the plea Dionysia says that Thomas cannot claim anything in the third part, "dicit enim quod, tertiam parte illa in seisina ipsius Dionysie et prædicti Ricardi quondam viri sui existente, quidam Johannes filius Johannis Maunsel de Tirlyngtone, junior, antecessor prædicti Thomæ, cujus heres ipse est, per scriptum suum

"concessit, relaxavit, et omnino pro se et heredibus suis in perpetuum quiete clamavit ipsi Ricardo et Dionysie et heredibus vel assignatis suis totum jus et claimum . . . in illa tertia parte, per nomen omnium terrarum et tenementorum in Tirlyngtone quæ prædicti Ricardo et Dionysia habent ex dimissione Gunnildæ quæ fuit uxor Maunselli de Tirlyngtone et quæ tenementa tenuerunt nomine dotis ipsius Gunnildæ post mortem ejusdem Maunselli, et obligavit se et heredes suos ad warrantandum prædictis Ricardo et Dionysie heredibus et assignatis suis prædicta tenementa . . ." Profert was made of the "scriptum" to that effect, "unde dicit quod, si ipsa ab aliquo extraneo esset inde implacitata, prædictus Thomas ut heres prædicti Johannis filii Johannis junioris teneretur ei prædicta tenementa warrantizare. Et petit judicium si contra factum prædictum actionem inde versus eam habere debeat, &c." In his replication Thomas says that he ought not to be barred from action by the deed, "dicit enim quod prædicta Gunnilda, post mortem prædicti Maunselli quondam viri sui, tenuit prædictam tertiam partem nunc petitam in dotem, &c., et statum suum quem habuit in eadem con-

## No. 59.

A.D. 1341. tell you that one W.,<sup>1</sup> your brother, whose heir you  
 demandant are, released to Dionysia, against whom this writ is  
 demanded brought, and Richard her husband, and their heirs,  
 on the with warranty—(and he showed a deed which bore  
 the scisin of date at a certain time);—judgment whether an ac-  
 his grand- tion, &c.—*Thorpe*. You see clearly how the deed pur-  
 father, and ports to bear a certain date, and he who uses it  
 the tenant can not say that it was made at a different time; and  
 pleaded in we tell you that Gunnilda, our tenant, after whose  
 bar the death the abatement, &c., and J., our father, through  
 deed of a whom we have made descent to ourselves, were living  
 collateral long after the time at which that deed purports to  
 ancestor. be dated, and that deed does not bar us except in  
 And it was respect of a time since our action was taken; judg-  
 said that ment whether to a deed of earlier time the law puts  
 this is a us to answer; for on a writ of Aiel or Mort d'An-  
 good plea, cestor, if you plead in bar the deed of a collateral  
 . . . his action  
 was taken  
 from a time  
 later than  
 the date . .  
 is compris-  
 ed in the

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<sup>1</sup> For the names of the parties, &c., see note, pp. 413–415.

No. 59.

W., vostre frere, qi' heir vous estes, releassa a Dionise,<sup>1</sup> A.D. 1341.  
vers qi' ceo bref est porte, et Richard son baroun, et  
a lour heirs, ove garrantie; et moustra fet qe porta  
date de certain temps; jugement si accion, &c.—*Thorpe*.  
Vous veez bien coment le fet purporte certain date,  
et celui qe luse ne poet dire qil se fist a autre temps;  
et vous dioms qe Gunnilde, nostre tenante, apres qi'  
mort labatement, &c., et J., nostre pere, par qui nous  
avoms fait descende a nous, si furent en vie long  
temps puis le temps qe cel fet purport date, et cel  
fet ne nous barre forsque de temps puis nostre accion  
pris; jugement si au fet deisne temps ley nous met  
a respondre; qar en bref dael ou mort dauncestre, si  
vous pledes en barre par le fet dauncestre costein, il

mandant  
demanda  
de la sei-  
sine soun  
aiel, et le  
tenant  
pleda en  
barre par  
fet de aun-  
cestre  
costein.  
Et fust dit  
qe cest  
bon plee,  
... saccion  
fust pris  
de puane  
temps qe  
la date  
... est com-  
pris deyns

" cessit prædictis Dionysie et Ri-  
" cardo, in quorum seisinâ prædic-  
" tum scriptum factum fuit. Et dicit  
" quod prædictus Johannes filius  
" Johannis qui fecit prædictum  
" scriptum fuit frater junior ipsius  
" Thomæ qui nunc, &c., et obiit,  
" viventibus prædictis Gunnilda et  
" Johanne patre, &c., et sic idem  
" Johannes filius Johannis qui fecit  
" scriptum illud nunquam aliquid  
" habuit in reversione ejusdem ter-  
" tiæ partis, sed semper reversione  
" illa continuata fuit in prædicto  
" Johanne patre, etc., quæ quidem  
" reversione post mortem prædicti  
" Johannis patris, &c., descendit  
" immediate isti Thomæ ut filio et  
" heredi ejusdem Johannis patris,  
" unde petit judicium si ipse per  
" factum prædicti Johannis filii Jo-  
" hannis, qui nunquam aliquod jus  
" habuit in prædicta tertia parte  
" nec in reversione ejusdem, ab  
" actione præcludi debeat, &c." In  
" her rejoinder " Dionysia dicit quod  
" ex quo prædictus Thomas ex-

" presse cognovit prædictum scrip-  
" tum esse factum prædicti Johan-  
" nis fratris, &c., cujus heres ipse  
" est, qui quidem Johannes, dum  
" superstes fuit, tenebatur warran-  
" tizare tertiam partem prædictam  
" prædictis Ricardo et Dionysie et  
" heredibus suis, virtute scripti præ-  
" dicti, et post mortem ejusdem  
" Johannis fratris, &c., prædictus  
" Thomas ut frater et heres, &c.,  
" tenebatur warrantizare eandem  
" tertiam partem versus quos-  
" cunque, viventibus prædictis Jo-  
" hanne patre, &c., et Gunnilda,  
" et etiam post mortem ejusdem  
" Gunnildæ, et sic prædicta war-  
" rantia semper continuata fuit in  
" persona ipsius Dionysie et sem-  
" per bona in jure, unde petit ju-  
" dicium si prædictus Thomas cor-  
" tra factum prædictum actionem  
" inde versus eam habere debeat,  
" &c." There were several ad-  
" journements, but the result does not  
" appear on the roll.

<sup>1</sup> All the MSS., Isabelle.

## No. 59.

A.D. 1341. ancestor, it is a good plea to say that since the deed . . . making of the deed, in case there be no date in it, that the deed shall and if there be a date, to say that, since the time not be a bar against which the date purports, my ancestor died seised, him . . . without answering to the deed.—*Stouford*. If you his action will say that the deed does not bar you, for the is taken from a later reason above, then plead; and if you will not, we time, as demand judgment whether in opposition to the deed appears below, &c.<sup>1</sup> of your ancestor with warranty, which you do not deny, you can demand anything.—*Thorpe*. We tell you that Gunnilda, our tenant in dower, leased her estate to Dionysia, who is now tenant, and to Richard her husband, on a certain condition, viz., that if Gunnilda should on a certain day pay to them 100s. it should be lawful for her to re-enter; and when they were thus tenants the release was made, and afterwards Gunnilda paid the 100s., and therefore she re-entered; and we tell you that J., our father, through whom we have made the descent, and G., our tenant in dower, survived that W. who released; judgment, since the tenancy which they had was by entry of Gunnilda defeated, whether by that deed you can bar us.—*Pole*. You see clearly how he pleads divers matters to avoid the deed; one is that he shows the reversion to be continued to him after the making of the deed, and thus abides judgment in law whether the deed bars him or not; another is that the tenancy which we had, when the release was made to us, was defeated by the re-entry of the tenant in dower; and if we traverse one, then the other is held as not denied; wherefore the law does not put us to answer.—*Thorpe*. All is pursuant, and to prove that the reversion is continued in us; for if our brother had released and had survived our father, the right which was to have descended to him would

<sup>1</sup> The text of this marginal note has been slightly injured in binding.

## No. 59.

est bon plee a dire qe puis la confeccion du fait, A.D. 1341  
 en cas qil y ad nul date, et sil y soit<sup>1</sup> date, a dire qe le fet, . . .  
 sient qe le  
 fet ne serra  
 mye barre  
 devers lyla  
 . . . u saccion  
 est pris  
 de pusne  
 temps. ut  
 patet in  
 ferius, &c.  
 puis le temps qe la date purporte, qe noun auncestre  
 morust seisi, sanz respondre al fet.—*Stouf.* Si vous  
 volez dire qe le fet ne vous barre pas, *causa qua*<sup>2</sup> *supra*,  
 donques pledez vous; et si noun, nous demandoms juge-  
 ment si contre le fet vostre auncestre ove garrantie,  
 quel vous ne dedites pas, si vous puissiez rien deman-  
 der.—*Thorpe.* Nous vous dioms qe Gunnilde, nostre  
 tenant en dower, lessa son estat a Dionise,<sup>3</sup> qore est  
 tenante, et a Richard son baroun, sur certain condicion,  
 qe si G. paiast a certain jour a eux<sup>4</sup> cs. qe lirreit  
 a lui de reentrer; et quant il furent issi tenantz le  
 relees se fist, et puis G. tendist les cs., par quei ele  
 reentra; et vous dioms qe J., nostre pere, par qi nous  
 avoms fet la descente, et G., nostre tenante en dower,  
 survesquirent celui W. qe releessa; jugement, del houre  
 qe la tenance<sup>5</sup> quele ils avoient par lentre G. si fust  
 defait, si par ceo fet nous puissiez barrer.—*Pola.* Vous  
 veiez bien coment il plede diverses choses en voidance  
 du fet; un est qil moustre la reversion continue tanqe  
 a lui [apres la confeccion del fet],<sup>6</sup> et issi demurer en  
 ley si le fet lui barre<sup>7</sup> ou noun; un autre est qe la  
 tenance qe nous avioms quant le relees fust fait a  
 nous fust<sup>8</sup> defait par le reentre<sup>9</sup> la<sup>10</sup> tenante en dower;  
 et si nous traversoms lun, et lautre est tenu a nient  
 dedit; par quei la ley ne nous met a respondre.—  
*Thorpe.* Tout est pursuant, et a prover qe la rever-  
 sion est continue en nous; qar si nostre frere ust  
 relese et ust sourvesqi nostre pere, le droit qe lui

<sup>1</sup> L., eit, instead of y soit.<sup>2</sup> L., ut.<sup>3</sup> All the MSS., Isabele.<sup>4</sup> The words a eux are not in L.<sup>5</sup> L., tenants.<sup>6</sup> The words between brackets are in T. alone.<sup>7</sup> 16,560, le baroun.<sup>8</sup> fust is in T. alone.<sup>9</sup> L., and 16,560, lentre.<sup>10</sup> L. and 16,560, sa.

## No. 59.

A.D. 1241. have been extinguished in his person ; and if our brother did not survive, and you had continued the seisin which you had when he released with warranty, still we should be barred by the warranty ; wherefore it is necessary to plead both matters, and if you destroy one of them, that is enough for you.—*HILLARY*. The plea is not double.—*Pole*. We do not admit the survival of his father or of Gunnilda after the death of his brother who released ; and, whereas he supposes that Dionysia and Richard had a conditional estate by lease from Gunnilda, we tell you that Dionysia had a simple estate at the time when the lease was made ; ready, &c.—*Thorpe*. How simple ? Which do you intend to say—that she had a fee simple, or that she had the estate of Gunnilda simply without condition ? for you must answer whether the lease was made on condition or not.—*Stouford*. I have nothing to do with the lease ; and it may be the lease was conditional, and that afterwards Dionysia had a release, and I will not plead it.—*Thorpe*. Certainly you will do so.—And then *Pole* made his protestation as above, and said that Gunnilda leased her estate simply without any condition ; ready, &c.—*Thorpe*. And we demand judgment, since he has admitted that our father, and also Gunnilda, survived him who released, in which case the right and the reversion, notwithstanding the deed, were always continued ; and you have not denied the abatement after the death of Gunnilda, and so the tenancy for which you had the warranty ceased ; and we pray seisin of the land.—*Pole*. Then you refuse the averment.—*Thorpe*. The averment will not be admitted ; for I admit what you offer to aver, viz., that Gun-

## No. 59.

dust aver descendu ust este esteint en sa persone;<sup>1</sup> A.D. 1341. et sil sourvesquit nient, et vous ussez continue la seisine qe vous avez quant il releassa ove garrantie, uncore nous serroms barre par la garrantie; par quei il covient aver lun et lautre, et si vous destruez lun, ceo vous suffist.—*HILL*. Le plee nest pas double.—*Pole*. Nous ne conisoms pas le survivere<sup>2</sup> son pere ne de Gunnilde apres la mort son frere qe releassa; et vous dioms qe la ou il suppose qe Dionise et Richard<sup>3</sup> avoint estat condicional du lees Gunnilde, qe Dionise<sup>4</sup> avoit estat simple au temps du lees<sup>5</sup> fait; prest, &c.—*Thorpe*. Coment simple? Le quel volez dire qe lele avoit fee simple, ou qe lele avoit simplement lestat Gunnelde sanz condicion, qar a ceo covient respondre le quel qe le lees fust fait par condicion ou noun.—*Stouf*. Jeo nay qe faire de lees; et poet estre qe le lees fust condicional, et qe puis D.<sup>6</sup> avoit un relees, et jeo nel pledray<sup>7</sup> pas.—*Thorpe*. Certez ferres.—Et puis *Pole* fist sa protestacion *ut supra*, et dit qe G. lessa simplement son estat sanz nule<sup>8</sup> condicion; prest, &c.—*Thorpe*. Et nous demandoms jugement, del heure qil ad conu qe nostre pere, et G. auxi, survesquist celui qe releassa, en quel cas le dreit et la reversion, *non obstante* le fet, fust<sup>9</sup> tout temps continue; et labatement navez pas dedit apres la mort G., et issi la tenance cesse de quel vous avez la garrantie; et prioms seisine de terre.—*Pole*. Donques vous refusez laverement.—*Thorpe*. Averement ne serra pas resceu; qar jeo conise bien ceo qe vous tendez daverer qe G.

<sup>1</sup> 16,560, peril.<sup>2</sup> L., survive; 16,560, sourvire.<sup>3</sup> L., Isabelle Richard; T. and 16,560, Dionise, instead of Dionise et Richard. The true names occur here for the first time in any MS. of the report.<sup>4</sup> L., I.; 16,560, A.<sup>5</sup> L. and 16,560, del relees, instead of du lees.<sup>6</sup> L., I.<sup>7</sup> L., prendra.<sup>8</sup> nule is in T. alone.<sup>9</sup> fust is in T. alone.



## No. 59.

A.D. 1341. nilda leased simply her estate without condition; but I demand judgment, since the warranty could only bind for the life of Gunnilda, for whose life Dionysia held, and, after the deed, the reversion and the right always after the death of him who released continued in my father, and in me after his death, which matter you have not denied; and we pray seisin.—HILLARY. You can not now have the averment; for what you offer to aver is admitted, and he abides judgment in law whether the deed bars him in this case.—Pole. And we demand judgment, inasmuch as he has admitted the deed by which he is bound to warranty; and, in this case, if his elder brother having made the deed were living, and we were impleaded by his father, through whom you claim by a writ of Intrusion, he would warrant to us by a writ of *Warrantia Chartæ*; and in any other action we should vouch him, and he would make to us satisfaction to the value of the fee simple, and the lease is as strong against you who are heir as it was against your ancestor who made the deed.—Thorpe. He would warrant during the life of Gunnilda, but not after her death, for by her death the tenancy was changed, and what was previously only a term for life became an abatement of the fee simple, and the warranty which was made during that seisin by him who had no right is not, and could not be, more extensive than the tenancy was; for if he who has no right release to my tenant for term of years, the warranty is void; and if warranty be made to two who hold jointly to them and to their heirs, he who survives will alone have the benefit of the warranty.—R. Thorpe. Suppose that a husband and his wife hold in dower of my inheritance, and I release to the husband with warranty, the warranty can not take effect during the wife's life, because the estate of the wife continues, and the

## No. 59.

lessa simplement son estat sanz condicion;<sup>1</sup> mes jeo de- A.D. 1341.  
 mande jugement, del houre qe la garrantie ne poet lier  
 forsque pur la vie G., a qi vie D.<sup>2</sup> tient, et la reversion  
 et dreit, apres le fait, tout temps apres la mort celui qe  
 relessa continue en moun pier, et moi apres sa mort,  
 quele chose vous navez pas dedit; et prioms seisine.  
 —HILL. Averement ne poez aver ore; qar ceo qe  
 vous tendez daverer est conu, et il demoert en ley si  
 le fet lui barre en ceo cas. — Pole. Et nous jugement,  
 desicome il ad conu le fet par quel il est lie de  
 garrantie; ou si son frere eisne qe fist le fet fust en  
 vie, et nous fussoms enplede de son pere, par qi vous  
 clamez par bref dentrusion, il nous garranterit par  
 bref de garrantie de chartre; et en autre accion  
 lui voucheroms<sup>3</sup> et il nous freit a la value de fee  
 simple, et le lees<sup>4</sup> est auxi fort vers vous qestes heir  
 come vers vostre auncestre qe fist le fet.—Thorpe. Il  
 garranterit en la vie G., mes apres la mort G. nient,  
 qar par sa mort la tenance est change,<sup>5</sup> et devient  
 abatement<sup>6</sup> de fee simple qe fust avant fors terme  
 de vie, et le garrantie qest fait en seisine par celui  
 qe nul dreit nad nest, ne poet estre, pluis large qe la  
 tenance nest; qar si celui qe nul dreit nad relest a  
 mon tenant a terme daunz, la garrantie est voide; et  
 si garrantie soit fait a ij. qe tenent<sup>7</sup> joyntement a  
 eux et a lour heirs, celui qe sourvist seulement avera  
 lavantage de la garrantie.—R. Thorpe. Jeo pose qe  
 baroun et sa femme tenent en dower de moun heritage,  
 et jeo relese au baroun ove garrantie, la garrantie,  
 vivant la femme, ne poet prendre effect, pur ceo qe  
 lestat la femme est continue, et le baroun saunz sa

<sup>1</sup> The words sanz condicion are  
 in L. alone.

<sup>2</sup> L., G.

<sup>3</sup> L., voshames.

<sup>4</sup> L. and 16,560, lien.

<sup>5</sup> 16,560, charge.

<sup>6</sup> L., par abatement.

<sup>7</sup> L., tiegnent.

## No. 59.

A.D. 1341. husband without his wife can not deraign it, but the warranty begins to vest after the death of the wife, because the husband's tenancy then begins; and for the same reason that the warranty does not vest before the tenancy begins, for that very reason a warranty which is made during seisin can only last as long as the tenancy lasts in which it is made; therefore, when this warranty was made to one who held *pur autre vie*, the estate of the tenant was not enlarged by the deed, but the right, notwithstanding the deed, continued in him in whom it previously was, and as soon as that tenancy ceased the warranty was annulled.—*W. Thorpe, ad idem*. Our action by this writ of Intrusion is taken from a later time than the date of the deed by which he would bar us; and if I were vouched by that deed I should escape from the warranty, because the action of the demandant is taken from a later time.—*Stouford*. The action is taken from an earlier time, for you demand on the seisin of your ancestor before the endowment, and if you can not show possession by any of your ancestors since the making of the deed, on which seisin you could demand, the warranty would bar you; and even if it were the case that your father, by reason that he was a stranger to him who made the deed, should be admitted to a writ of Intrusion after the death of Gunnilda, or to a writ of Waste during her lifetime, because the reversion was continued in him, nevertheless that right can not descend to you, who are his heir, on account of the warranty of your brother which extinguishes the right.—*Thorpe*. If I have a tenant in dower of my inheritance who is disseised, and during the seisin of the disseisor my ancestor releases with warranty, if the woman afterwards recover by assise and die

## No. 59.

femme ne la poet derener, mes ele<sup>1</sup> comence de vestir A.D. 1341. apres la mort la femme, pur ceo qadonques comence la tenance ie baroun; et par mesme la resoun qe la garrantie ne veste pas avant qe la tenance comence, par mesme la resoun garrantie quele est fait en seisine ne poet durer forsque tanqe la tenance dure<sup>2</sup> en quelle ele est fait; donques, quant cest garrantie fust<sup>3</sup> fait a celui<sup>4</sup> qe tient a autri vie, par le fet lestat le tenant ne fust pas enlargi, mes le dreit, *non obstante* le fet, continue en celui en qi il fust devant, a pluis toust qe cele tenance cesse la garrantie est anienti.—*W. Thorpe, ad idem.* Nostre accion par ceo bref de Intrusion est pris de puisne temps qe nest le fet par quel il nous voet barrer; et si jeo fuise vouche par ceo fet jeo estourteroy de garrantier, pur ceo qe laccion le demandant est pris de puisne temps.—*Stouf.* Laccion est pris deisne temps, qar vous demandez de la seisine vostre auncestre avant le dowement, et si vous ne poez<sup>5</sup> moustrer possession dascun de voz auncestres puis la confeccion de ceo fet, de quel seisine vous purrez demander, la garrantie vous barreit; et tout fust il qe vostre pere, pur ceo qil fust estrange a celui qe fist le fet, serreit resceu a bref de Intrusion apres la mort G., ou en sa vie a<sup>6</sup> bref de Wast, pur ceo qe reversion fust continue en lui, nepurquant cel dreit ne poet descendre en vous, qestes son heir, pur la garrantie vostre frere qe esteint le dreit.—*Thorpe.* Si jay une tenante<sup>7</sup> en dower de moun heritage qe soit disseisi, et en la seisine le disseisour moun auncestre relest ove garrantie, si la femme recovere apres par assise et devie seisi, et le disseisour

<sup>1</sup> T., il; the word is omitted from L.

<sup>2</sup> L., durante la tenance, instead of tanqe la tenance dure.

<sup>3</sup> L. and 16,560, est.

<sup>4</sup> The words fait a celui are not in 16,560.

<sup>5</sup> L., purrez; 16,560, pusses.

<sup>6</sup> a is in T. alone.

<sup>7</sup> 16,560, tenance.

Nos. 60, 61.

A.D. 1841. seised, and the disseisor enter after her death, I shall not by the warranty be barred from a writ of Intrusion.—*Quære*.—*Pole*.—In the case you put the tenancy during which the warranty was made is thoroughly defeated, but here the tenancy continues.—In this plea it was touched that a stranger who assigns dower shall not have a writ of Intrusion, but that, if she recovers, a writ of Intrusion shall be maintained on the recovery.—*Stouford*. If a woman recover dower, after her death he to whom the reversion belongs shall have a *Scire facias* to have again the land; so also, where a man enters into warranty and warrants to another for term of life, and makes recompence to the value, after the death of the tenant who recovers to the value, he shall have a *Scire facias* to have again, &c.—*HILLARY*. In the last case you speak truth, &c.

Note concerning Deceit granted to the heir. It was said that if the father die after the tenements are recovered against him by default, his heir shall have a writ of Deceit.

(60.) § Note that one brought a writ of Deceit in respect of land lost by default, and, pending the writ, he by whom the writ was brought, and who had lost, died; wherefore *Deruorthy* prayed a writ for his heir.—*HILLARY*. The tenant has done no wrong to the heir, and, if the writ be maintained for the heir, for the same reason the fourth or fifth heir would have a similar writ against the tenant, whoever he might be.—*Thorpe*. There would be good law for it, for he can not have any other recovery but by writ of Right; and an Attaint lies for the heir.—And afterwards *HILLARY* allowed the writ for the heir.

Execution on Statute Merchant

(61.) § Note that a Prior, to whom a recognisance on Statute Merchant had been made, sued by process

Nos. 60, 61.

entre apres sa mort, a un bref de Intrusion jeo ne A.D. 1841.  
 serroi pas barre par la garrantie.—*Quære*.<sup>1</sup>—*Pole*.  
 En vostre cas la tenance de nette est defait en quele  
 la garrantie se fist, mes icy est la tenance continue.  
 —Et en ceo plees fust touche qe estrange qe assigne  
 dower navera pas bref de Intrusion, mes, si ele recovere, [Nitz.  
 Intrusion.  
 8.]  
 bref de Intrusion serra meyntenu sur le recoverer.  
 —*Stouf*. Si femme recovere dower, apres sa mort  
 celui a qi la reversion appent avera *Scire facias* de  
 reaver la terre, auxi bien come en cas ou homme entre  
 en garrantie et garrant<sup>2</sup> a autre pur terme de vie, et  
 fait issi a la value, apres la mort le tenant qe recovere  
 a la value, il avera *Scire facias* de reaver,<sup>3</sup> &c.—  
 HILL. En le darein cas vous dites verite, &c.

(60.)<sup>4</sup> § *Nota* qun porta bref de disceite de terre  
 perdu par defaute, et, pendant le bref, celui par qi le  
 bref est porte, et qe perdist, morust; par quei *Derworth*.  
 pria bref pur leir celui.—HILL. Il nad fait nul tort al  
 heir, et si le bref soit meintenu pur lui, par mesme la  
 resoun, vers qi qe fust tenant,<sup>5</sup> le quart ou le quinte  
 heir avereit tiel bref.—*Thorpe*. A ceo serreit bone ley,  
 qar autre recoverir ne poet il aver forsqe par bref de  
 dreit; et atteint gist pur leir.—Et puis HILL. granta le  
 bref pur leir.

*Nota de*  
*deceyt*  
*grante al*  
*heir.*  
*Fust dit*  
*qe si le*  
*pere morye*  
*apres qe*  
*les tene-*  
*ments sunt*  
*recoveris*  
*devers ly*  
*par defaute,*  
*qe soun*  
*heir avera*  
*bref de*  
*desette.*<sup>6</sup>

(61.)<sup>4</sup> § *Nota* qun Priour, a qi une reconisance sour  
 estatut marchant fust fait, par proces suy vers le

*Execucion*  
*sour Es-*  
*tatut Mar-*

<sup>1</sup> *Quære* is in T. alone.

<sup>2</sup> For the words entre en garrantie et garrant there are substituted in L. the words fait garrant; from 16,560 the words et garrant are omitted.

<sup>3</sup> T., daver, instead of de reaver.

<sup>4</sup> From T., L., and 16,560.

<sup>5</sup> L. and 16,560, devant.

<sup>6</sup> The marginal note, from the words Fust dit to the end, is from L. alone.

## No. 62.

A.D. 1341. against the debtor, and had all the lands of the  
 sued by a debtor by judgment of the COURT. And so it was in  
 Prior. And fraud of the Statute.<sup>1</sup> And therefore *quære*; for one  
 he had the has seen that an *Elegit* has been denied to a man in  
 land by Klegit. religion.

Writ of (62.) § Eleanor, Countess of Ormond, sued a writ  
 Waste. of Waste against Isabel,<sup>2</sup> who was the wife of Alan  
 Pluknet, supposing that she held of the Countess in  
 dower, of the endowment of Alan, her husband, by the  
 assignment which K,<sup>3</sup> daughter and heir of Alan,  
 thereof made to her. And note that the Countess did  
 not show by her count that the reversion was granted  
 to her or that the tenant attorned.<sup>3</sup>—*Pole*. What have

<sup>1</sup> 7 Edw. I. (*De Religionis*). See  
 also 13 Edw. I. (Westm. 2), c. 32.

<sup>2</sup> As to the names, &c., see note <sup>1</sup>,  
 p. 427.

<sup>3</sup> As to this, see note <sup>1</sup>, p. 427.

## No. 62.

dettour, et avoit totes les terres le dettour par agard de COURT. *Et sic fuit*<sup>1</sup> *fraus*<sup>2</sup> *statuto. Et ideo* quære; qar homme ad vewe qe *lelegit* ad este veie<sup>3</sup> a homme de religion.

A.D. 1341.  
chaunt sue  
par un  
Prior. Et  
avoit la  
tere par le  
Elegit.<sup>4</sup>  
[Fitz.  
Execucion,  
65.]

(62.)<sup>5</sup> § Elianore, Contasse Dormond, suyst un bref de Wast vers Isabele, qe fust la femme Aleyn Pluknet, supposaunt qele tient de lui en dower, del dowement Aleyn, son baroun, del assignement qe K., fille et heir Aleyn, de ceo a lui fist. *Et Nota* qele ne moustra pas par counte qe la reversion lui fust graunte ne qe le tenant attourna.—*Pole*. Quei avez del assignement?

Bref de  
Wast.  
[Fitz.  
Attourne-  
ment, 11.]

<sup>1</sup> L. and 16,560, fiet.

<sup>2</sup> L., *forte supra*; in 16,560 the words *forte supra* are not substituted but added.

<sup>3</sup> L. and 16,560, voie.

<sup>4</sup> From the word "sue" to the end the marginal note is from L. alone.

<sup>5</sup> From T., L., and 16,560. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 420. It there appears that the action was brought by Eleanor, Countess of Ormond, against Sibilla late wife of Alan Plokenet, in respect of waste in the county of Hereford, that is to say, "vastum, venditionem, et destructionem, et exilium, de terris, domibus, boscis, gardinis, et hominibus, in Kylpeck, que tenet in dotem, de prefata Comitissa, de dono predicti Alani, quondam viri sui, ex assignatione quam Johanna que fuit uxor Henrici de Bohun soror et heres predicti Alani inde fecit prefate Comitisse, ad ex-

"heredationem ipsius Comitisse, &c." The count or declaration was that "Henricus de Penebrugge, quondam vir predictæ Sibillæ, et ipsa Sibilla tenuerunt in dotem ipsius Sibillæ de prædicta Johanna medietatem manerii de Kylpek . . . . que quidem Johanna concessit reversionem eorundem tenementorum præfatæ Comitissæ;" that Henry and Sibilla attorned, and that Sibilla committed the waste as above (the details being stated), and as to the "exilium," "exulando quosdam Robertum Gilbard, Adam le Bow-yare et Rogerum Hulle, nativos suos, quorum quilibet tenuit unum mesuagium et unam virgatum terræ in eadem medietate in vilenagio." The plea was that, after the attornment of Henry and Sibilla, she did not commit any waste. Issue was joined thereon. The award of the *Venue* appears on the roll, but not the result.



## No. 63.

A.D. 1341. you to show the assignment?—*Thorpe* showed a deed by which K. granted the reversion after the death of Isabel, and said that Isabel and one W.,<sup>1</sup> her husband, attorned.—*Pole*. You see clearly how she makes herself assignee of this reversion by a deed *in pais*, which is void without attornment, and she does not show any attornment except during coverture, which was the act of our husband; judgment, &c.—And he did not dare abide judgment on that; wherefore *Pole* said:—No waste was committed after the death of our husband.—And he did not dare abide judgment on that; and then he said that after the attornment was made to her no waste was committed; ready, &c.—*Thorpe*. The attornment gave us the inheritance, wherefore your plea is tantamount to saying that no waste was committed to our disherison, and an issue is more proper on the writ than on a matter collateral to the writ.—*Pole*. Then you refuse the averment.—And afterwards *Thorpe* accepted the averment, and maintained that she had committed waste since the attornment; ready, &c.—And the other side said the contrary.

Writ of  
Dower.

(63.) § Dower was brought against a man and his wife who were guardians. The husband made default after default. The wife showed how by her purchase of a certain parcel she was tenant of the freehold, and she prayed to be admitted; and as to the residue, she prayed to be admitted as guardian.—*Pole*. We will imparl.—*Thorpe*. We pray that the lady may make an attorney.—*HILLARY*. She can not until she be admitted, or until she have pleaded to issue, and then we shall see whether we can do it.—*Pole*. As to her prayer to be admitted as guardian, it is only a chattel which her husband can lose, and has lost, by his default; judg-

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<sup>1</sup> For the real names, &c., see note <sup>4</sup>, p. 427.

## No. 63.

—*Thorpe* moustra fet par quel K. granta la reversion A.D. 1341. apres la mort Isabele, et dit qe Isabele et un W., son baroun, sattournerent.—*Pole*. Vous veez bien coment ele se fait assigne de cest reversion par fet en pais, qest voide sanz attournement, et ele ne moustre pas attournement forsque durant la coverture, quel est le fet nostre baroun; jugement, &c.—Et nosa pas demorer; par quei *Pole* dit qe puis la mort nostre baroun nul wast fait.—Et sur ceo nosa pas demorer; et dit puis qe puis lattournement fait a lui nul wast fet; prest, &c.—*Thorpe*. Lattournement nous fait enheritaunce, par [quei vostre plee amont a taunt qe nul wast fait a nostre disheritaunce, et cest plus propre issu sur le bref qe sur]<sup>1</sup> chose costeaunt al bref.—*Pole*. Donques refuses laverement.—Et puis *Thorpe* prist laverement, et meintient quele ad fait wast puis<sup>2</sup> lattournement; prest, &c.—*Et alii e contra*.

(63.)<sup>3</sup> § Dower porte vers un homme et sa femme gardeins. Le baroun fist defaute apres defaute. La femme moustra coment par son purchase de certaine parcele ele est tenant de frank tenement, et pria destre resceu; et quant al remenant, ele pria come gardeine destre resceu.—*Pole*. Nous enparleroms.—*Thorpe*. Nous prioms qe le dame puisse faire attourne.—*HILL*. Ele ne poet nient tanqele soit resceu, ou qele eit plede a issu, et donques nous verroms si nous le purroms faire.—*Pole*. Quant a ceo qele prie come gardeine destre resceu, ceo nest forsque chatel qe son baroun poet perdre, et ad perdu, par sa defaute; jugement si ele serra

Bref de  
Dower.

[Fitz.  
Resceit,  
123;  
Suerte, 2.]

The words between brackets  
are not in L.

<sup>1</sup> L. and 16,560, par.

<sup>2</sup> From T., L., and 16,560.

## No. 63.

A.D. 1341. ment whether she shall be admitted.—HILLARY. As to that we will do what is right; answer as to the residue.—*Pole*. As to the other parcel, you see clearly how she prays to be admitted as tenant of the freehold, which would go to the abatement of the writ; and if she speaks the truth, judgment would be a disseisin to her and not a recovery; wherefore judgment whether she shall be admitted.—*Thorpe*. If the writ had been good we should have been admitted; and your false writ is no reason that we should be ousted from admission; and I say that she will not have an assise, for by this writ, to which she is a party, the freehold will be recovered.—*Pole*. She will only lose the chattel and not the freehold, but the heir would lose it by this writ.—HILLARY. One has heard that on admission the writ has been abated.—*Blaik*. It would be strange that she should plead in abatement of the writ before she was admitted. And suppose the issue were taken between us, and it were found that she was tenant of the freehold, and we afterwards brought a writ against her husband and her as tenants of the freehold, the husband would say that he had only wardship, and would again abate the writ.—HILLARY. He would not; for he could not plead without his wife, and she would be estopped by her present plea.—*Pole*. Who would have an Attaint if issue were joined to the inquest? (as meaning to say that no one would) for the wife is not party to the writ in the manner in which she prays to be.—And then he prayed his judgment as to the residue in respect of which she prayed to be admitted as guardian, for that is clear.—HILLARY. If you abide judgment in law, you shall not have your judgment for a parcel.—And afterwards, because *Pole* did not wish that the demandant should be delayed by an adjournment in respect of that which was clear, he said that the demandant's husband died seised, and that the Earl of Hereford

## No. 63.

resceu.—HILL. De ceo nous ferroms bien ; responez al A.D. 1341.  
 remenant.—*Pole*. Quant a lautre parcele, vous veez  
 bien coment ele prie come tenant de frank tenement,  
 quele chose serreit al abatement du bref ; et si ele  
 die verite, le jugement serra disseisine a lui et noun  
 pas recoverir ; par quei jugement si ele serra resceu.  
 —*Thorpe*. Si le bref ust este bon nous ussoms este  
 resceu ; et par vostre faux bref nest pas resoun qe  
 nous soioms ouste de la resceite ; et jeo dy qele navera  
 pas assise, qar par ceo bref, a quel ele est partie, frank  
 tenement serra recoveri.—*Pole*. Ele perdra forsqe chatel,  
 et le frank tenement nient, mes freit leir par cestui  
 bref.—HILL. Homme ad oy qe sur la resceite le bref  
 ad est abatu.—*Blaik*. Il serreit merviel qele pledreit  
 al abatement du bref avant qele fust resceu. Et jeo  
 pose qe lissue se prist entre nous, et trove fust qele  
 fust tenant du frank tenement, et nous portames apres  
 bref<sup>1</sup> sur son baroun et lui come tenantz du frank tene-  
 ment, le baroun dirreit qil nad forsqe garde, et abatereit  
 le bref autrefoitz.—HILL. Noun freit ; qar il ne pledreit  
 pas saunz sa femme, et ele serreit estope par son plee a  
 ore.—*Pole*.<sup>2</sup> Qi avereit atteinte si lenquest se joynast ?  
*quasi diceret* nul homme ; qar la femme nest pas partie  
 al bref a la manere<sup>3</sup> qele prie.—Et puis il pria son  
 jugement del remenant dount<sup>4</sup> ele pria<sup>5</sup> come gardeine  
 destre resceu, qar cest cler.—HILL. Si vous demorez  
 en ley, vous naverez pas vostre jugement<sup>6</sup> par parcele.  
 —Et puis, pur ceo qe *Pole* ne voleit pas qe le deman-  
 dante fust delaye par ajournement de ceo qe fust cler,  
 il dit qe son baroun morust seisi, et le Counte de

<sup>1</sup> bref is in T. alone.<sup>2</sup> *Pole* is not in L.<sup>3</sup> L., alior, instead of a la ma-  
 nere.<sup>4</sup> 16,560, deit.<sup>5</sup> 16,560, qe pria.<sup>6</sup> L., bref.

## No. 63.

A.D. 1341. snatched the wardship, and leased it to her who now prays to be admitted and to her husband, and thus they were tenants in wardship on the day on which the writ was purchased; ready, &c.—And the other side said the contrary.—And as to the residue BASSET adjudged seisin, and that she should be ousted from the admission, because the wardship was only a chattel.—HILLARY. Now find surety for the issues.—*W. Thorpe*. She shall not do so, for she is named in the writ, and by Statute<sup>1</sup> admission is not given to any other but a stranger who by reason of a reversion prays to be admitted, and he shall find surety.—*Pole*. She does not pray to be admitted as one named in the writ, but just as a stranger in order to abate this writ; and if she speak falsely, we shall thus be delayed of our dower by her falsity without having the issues.—HILLARY. You will be delayed in any case in which a *feme covert* is admitted by reason of the default of her husband, and you are not put to such mischief as you say; for if your husband did not die seised, as you have said, you will recover against the husband, and have damages for the whole time up to your judgment.—*Pole*. That would be strange—to charge the husband with damages in respect of a time during which the demandant is not delayed by him. And perchance it will be found that he did not die seised; and enquiry must be made thereof. And we are within the same mischief for which the Statute<sup>1</sup> gives surety for the issues on a false suggestion, for the demandant has been delayed by averment to the country; and we are in such case although she is named in our writ, for by the writ she is not admissible; and since she did not tender surety for the issues, judgment.—*W. Thorpe*. Ready to find surety, if it appear to the Court to be

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<sup>1</sup> 20 Edw. I. (*De defensionis juris*).

## No. 63.

Herford happa la garde, et lessa a cele qore prie destre A.D. 1341. resceu et a son baroun la garde, et issi furent il tenantz, jour du bref purchase, en garde; prest, &c.—*Et alii e contra*.<sup>1</sup>—Et quant al remenant BASS. agarda seisine, et qele fust ouste de la resceite, pur ceo qe ceo nest forsqe chatel.<sup>2</sup>—HILL. Ore trovez surte des issues.—*W. Thorpe*. Noun fra, qar ele est nome en bref, et par statut nest pas done resceite a<sup>3</sup> autre qe a estrange qe par cause de reversion prie destre resceu, et il<sup>4</sup> trovera sourte.—*Pole*. Ele ne prie pas destre resceu com cele qest nome, mas auxi com estrange et pur ceo bref abatre; et si ele die faux, nous serroms issint delaie de [nostre dowere par sa fauxine saunz aver issuz.—HILL. Areti serrez vous en tut cas ou femme coverte par defaute son]<sup>5</sup> baron est resceu, et vous nestes pas a tiel meschief com vous parlez; qar si vostre baron ne morust pas seisi, com vous avez dit, vous recoverez vers le baron, et les damages de tant de temps tanqe vostre jugement.—*Pole*. Ceo serroit merveille de charger<sup>6</sup> le baron de damages de temps qe le demandant nest pas delaie par luy. Et par cas serra trove morust pas seisi; et ceo covyent estre enquis. Et nous sumes en mesme meschief pur quel lestatut doune seurte des issuez par faux suggestion, qar le demandant fuit delaie par averement de pays; et en tiel cas sumes nous coment qele soit nome en nostre bref, qar par le bref ele nest pas resceyvable; et del heure qele ne tendi pas seurte des issues, jugement.—*W. Thorpe*. Prest a trover, si Court veie qil bosoigne.—

<sup>1</sup> The words *Et alii e contra* are in T. alone.

<sup>2</sup> The report ends here in T.

<sup>3</sup> The words *receit a* are not in 16,560.

<sup>4</sup> The words *et il* are not in 16,560.

<sup>5</sup> The words between brackets are in 16,560 alone.

<sup>6</sup> L., *descharger*.

## No. 64.

A.D. 1341. necessary.—And afterwards HILLARY said:—She is named in the writ, and therefore she is not in the case in which it is necessary to find surety.—Therefore on their issue they had a day over without finding surety, &c.—The last error was worse than the first.

Dower. (64.) § Dower. The tenant vouched. The vouchee came by summons, ready to warrant. — *Thorpe*. Although you are willing to warrant *gratis*, we show why we wish to bind you;—and he produced a deed by which the ancestor of the vouchee enfeoffed him of a certain parcel for the term of his life, and to his executors for two years afterwards, with warranty; and of another parcel the same ancestor

No. 64.

Et puis HILL. dit qele est nome en le bref, par quei A.D. 1241. il nest pas en cas de trover seurte.—Par quei sour lour myse ils ount jour outre sanz trover seurte, &c.  
—*Novissimus error pejor*<sup>1</sup> *priore*.

(64.)<sup>2</sup> § Dower. Le tenant voucha. Le vouche vient Dower. par somons, prest a garrantir.—*Thorpe*. Tout voillez vous garrantir de gree, nous mostroms par quei nous voloms vous lier;—et mist avant un fet par quel launcestre le vouche lui feffa de certain parcele a terme de sa vie, et [ij. aunz outre a ses executours, ove garrantie; et dautre parcele mesme launcestre lui feffa

<sup>1</sup> The word *pejor* is not in L.

<sup>2</sup> From T., L., and 16,560. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 320, d. It there appears that the action was brought by Eleanor, late wife of Theobald Russel against "Magister" Roger Cantek in respect of a third part of the manor of Dereham (Gloucester) and the advowson of the church of the same manor, and a third part of of a moiety of the manor of Aust. Roger vouches to warranty Ralph son and heir of Theobald Russel, knight, who comes and prays that it be shown wherefore he ought to warrant. Roger says that Theobald father of Ralph, whose heir he is by "scriptum indentatum," gave to Roger the manor [of Dereham] for term of Roger's life, and to his executors for one year after his death, to hold of Theobald, his heirs and assigns, together with the advowson, &c., at an annual rent of 40 marks, "post terminum" "quinque annorum post datum" "predietii scripti," with warranty to Roger for his term and to his

executors for the year after his death; "et idem Theobaldus concessit pro se et heredibus suis" "quod omnes expensæ et missæ" "allocentur predicto Rogero quas" "faceret per visum homagii pro" "sustentatione et emendatione domorum predicti manerii." Profert was made of this "scriptum," as well as profert of another "scriptum," by which Theobald gave to Roger all the land which he held in the manor of Aust for Roger's life, and "heredibus, assignatis, et executoribus suis, per" "duos annos integros post decessum ejusdem Rogeri," to hold of the chief lords, and bound himself and his heirs to warrant to Roger and his executors as above. Ralph the vouchee does not deny the deed, and warrants Roger "tanquam heres" "ipsius Theobaldi sanguine nihil" "habens par descensum hereditarium in feodo simpliciter eodem" "Theobaldo, et reddit predictæ" "Alianoræ dotem suam predictam, &c." Judgment was given thus:—"Ideo consideratum est" "quod si predictus Radulfus satis



## No. 641

A.D. 1841. enfeoffed him for the term of his life, and for one year afterwards, with warranty;—and thus (said *Thorpe*) we wish to bind you by his deeds.—*Gaynesford*. We will imparl.—*Thorpe*. No; you have warranted.—*Gaynesford*. You see clearly how by the deed they claim a term of years, which does not lie in warranty; judgment.—*HILLARY*. He claims a freehold, which does lie in warranty; and although his estate is enlarged by a term of years, after his death, his estate of freehold is not impaired.—*Pole*. We warrant as one who has nothing by descent, and we render dower to the demandant.—*Thorpe*. You see clearly how he has entered into warranty by the deed of his ancestor, which we have produced, by which deed a rent of six marks is reserved to the lessor and his heirs, which rent he does not deny has descended to him, and that amounts to more than the dower of the demandant; wherefore we pray, since he is the husband's heir, that judgment

" habeat de libero tenemento quod  
 " fuit prædicti Theobaldi quondam  
 " viri, &c., per descensum heredita-  
 " rium in feodo simplici unde fa-  
 " core potest . . . . Alianoræ  
 " ad valentiam, &c., tunc prædic-  
 " tus Rogerus teneat in pace, et  
 " prædicta Alianora habeat de  
 " terra prædicti Radulfi quam ha-  
 " buit per descensum prædictum  
 " a die Paschæ in xv. dies proxime  
 " præterito quando vocatus fuit ad  
 " warrantizandum, &c., ad valen-  
 " tiam, &c. Et, si quid ei inde  
 " defuerit, id habeat de prædictis  
 " tertiis partibus versus prædictum  
 " Rogerum petitis. Et idem Ra-  
 " dulfus in misericordia, &c. Et,  
 " quia nescitur quantum prædictæ  
 " tertie partes petitis valent per

" annum, nec etiam quæ terras et  
 " tenementa prædictus Radulfus  
 " habuit ad præfatam quindenam  
 " Paschæ per descensum prædic-  
 " tum, præceptum est prædicto  
 " Vicecomiti Gloucestris quod per  
 " sacramentum, &c., extendi et ap-  
 " pretiari faciat prædictas tertias  
 " partes petitas, et etiam quod dili-  
 " genter inquirat quæ terras et  
 " tenementa habuit ad præfatam  
 " quindenam Paschæ per descen-  
 " sum prædictum. Et similiter  
 " cuilibet prædictorum Vicecomi-  
 " tum [Berk., Somers., Dors.] quod  
 " per sacramentum, &c., inquirat  
 " quæ terras et tenementa habuit,  
 " &c." The Sheriff of Gloucester re-  
 " turned that Ralph had no lands or  
 " tenements by hereditary descent in

No. 64.

pur terme de sa vie et]<sup>1</sup> un an outre, ove garrantie; A.D. 1341  
—et issi vous voloms lier par ses fetz.—*Gayn.* Nous  
enparleroms.—*Thorpe.* Nanil;<sup>2</sup> vous avez garranti.—  
*Gayn.* Vous veez bien coment par le fet il clament  
terme daunz, quel ne chiet pas en garrantie; [juge-  
ment.—*HILLARY.* Il cleyme frank tenement, qe chiet  
en garrantie;]<sup>1</sup> et tout soit<sup>3</sup> son estat enlarge par  
terme<sup>4</sup> apres sa mort, son estat de frank tenement  
nest pas enpeyry.<sup>5</sup>—*Pole.* Nous garrantoms come celui  
qe rien nad par descente, et rendoms dower a la  
demandante.—*Thorpe.* Vous veez bien coment il est  
entre en garrantie par le fet son auncestre, quel nous  
avoms mys avant, par quel fet vj. marcz de rente est  
reserve al lessour et a ses heirs, quel rente il ne dedit  
pas qe nest descendu a lui, et ceo amounte a pluis qe  
le dower la demandante; par quei nous prioms, del  
heure qil. est heir le baroun, qe le jugement se face

fee simple from Theobald at the  
Quinzaine of Easter in the County  
of Gloucester. He also returned  
extents of the three parts, "quæ ad  
"majorem valorem quam continent  
"extenduntur, prout per prædictum  
"Magistrum Rogerum hic testatur,  
"&c.," which Roger "tenens, &c.,  
"pro eo quod in favore prædictæ  
"Alianoræ prædictæ extenstæ in  
"damnum ipsius Rogeri minus  
"juste factæ sunt," prays a writ  
to the Sheriff to re-extend. *Alias*  
writs issued to other Sheriffs who  
had not returned. "Et super hoc  
"prædictus Rogerus testatur hic  
"quod terræ et tenementa descen-  
"derunt prædicto Radulfo de præ-  
"dicto Theobaldo patre suo post  
"prædictam quindenam Paschæ,  
"videlicet apud Auste et Doerham  
"in eodem Comitatu Gloucestris,  
"et petit breve ad reinquirendum,

"&c." This writ was granted.  
On the return day each of the  
Sheriffs of Berks, Somerset, and  
Dorset "mandavit hic quod præ-  
"dictus Radulfus" had no lands  
or tenements by descent of inheri-  
tance in fee simple in his bailiwick at  
the said Quinzaine of Easter, when  
Ralph was vouched. "Et, quia  
"prædictus Vicecomes Glouces-  
"tris superius mandavit quod idem  
"Radulfus ad præfatam quinde-  
"nam Paschæ nulla habuit terras  
"seu tenementa in balliva sua per  
"descensum prædictum, ideo fiat  
"executio super prædicto judicio  
"reddito."

<sup>1</sup> The words between brackets  
are not in L.

<sup>2</sup> Nanil is in T. alone.

<sup>3</sup> soit is in T. alone.

<sup>4</sup> The words par termes are not in L.

<sup>5</sup> T., enpury; 16,560, enpury.

## No. 65.

A.D. 1341. may be given against him, and that we may hold in peace.—*Pole*. The rent of which you speak is reserved only after five years after the lease passed, and it is still within the five years; besides, the rent was never a freehold in the seisin of her husband, and she shall not be endowed of anything else.—*HILLARY*. Whether the heir has anything or not, the judgment will always be the same; and therefore the COURT adjudges that the woman do recover against the heir if he have anything by descent, and if not, against the tenant, and the tenant over to the value when the time shall come, &c., and that the warrantor be in mercy.—*Pole*. Your judgment should be that she do recover of the freehold of her husband which descended to the heir, for if he had anything else by descent she should not have it.—*HILLARY*. The judgment shall not be other than in common form.

Note:  
Process.

(65.) § Note that a writ of Trespass was brought against Laurence Lodelowe, and an Exigent issued against him at the Quinzaine of Easter returnable at the Octaves of St. Martin now; and at the Month of Easter last passed Laurence came, and surrendered himself, and found surety to answer to the party at the aforesaid Octaves, at which day no writ was returned, and Laurence being called did not come. The plaintiff prayed a *Capias* against the mainpernors, and an Exigent against Laurence.—*Pole*. The Exigent is not returned, in which case, even if Laurence were here, he could do nothing.—*KELSHULLE*. What you say is wrong; he has a day by the roll and by mainprise to answer to the party.—And, by judgment, a *Capias* issued against the mainpernors for the King, and an Exigent against Laurence.

No. 65.

vers lui, et qe nous tiegnoms<sup>1</sup> en pees.—*Pole*. La rente A.D. 1341. dont vous parles nest reserve forsque apres les v. aunz apres le lees passe, et cest uncore denz les v. aunz; ovesqe ceo, la rente ne fust unques frank tenement en la seisine soun baroun, et dautre chose ne serra ele dowe.—*HILL*. Quel qe leir eit ou noun, le jugement serra touz jours un; et pur ceo agarde le COURT qe la femme recovere vers leir sil eit par descende, et si noun, vers le tenant, et le tenant a la value quant temps vendra, &c., et le garrant en la mercoye.—*Pole*. Vostre jugement serreit qele recovere del frank tenement son baroun qe descendist al heir, qar sil avoit autre chose par descende ele lavereit pas.—*HILL*. Le jugement ne serra autre forsque<sup>2</sup> comune.

(65.)<sup>3</sup> § *Nota* qe bref de trespas fust porte vers Laurance Lodelowe, et Exigende issist vers lui a la xv. de Pasche retournable as utaves de Seint Martyn ore; et au moys de Pasche dareyne passe<sup>4</sup> Laurance vient et se rendist, et trova surte de respondre a la partie a les avantditz uytaves, a quel jour nul bref est retourne, et Laurance demande ne vient pas. Le pleintif pria *Capias* vers les meynpernours, et Exigende vers Laurance.—*Pole*. Lexigende nest pas retourne, en quel cas, mesqe Laurance fust icy, il ne poait rien faire.—*KELS*. Vous dites mal; il ad jour par rolle et par meinprise de respondre a la partie.—Et, par agard, *Capias* issist vers les meynpernours pur le Roi, et Exigende vers Laurance.

Nota:  
Proces.  
[Fitz.  
Exigent,  
13.]

<sup>1</sup> T., tenoms; 16,560, tignoms.

<sup>2</sup> T., en; L., gen.

<sup>3</sup> From T., L., and 16,560.

<sup>4</sup> The words dareyne passe are in T. alone.

## Nos. 66-68.

A.D. 1341.  
Note concerning Receipt and Nisi prius granted at the first day.

(66.) § Note that a woman was admitted on the default of her husband, and pleaded to issue, and at *Nisi prius* made default; and at her day in the Bench one J. came, and showed that the reversion after the death of the husband and wife belonged to him by his own lease, and prayed to be admitted. And his admission was counterpleaded, because he ought to have come when the husband made default, for judgment would have passed then had it not been for the coming of his wife; and also when the default in the country at *Nisi prius* was recorded against the wife, he ought to have come then.—This was not allowed.—*Thorpe*. Then we tell you that the wife had the fee; ready, &c.—And the other side said the contrary.—And surety was found, &c.—*Thorpe*. We pray the *Nisi prius*, for he who prays to be admitted can not be essoined.—*HILLARY*. That is true; but the demandant can.—*Thorpe*. He renounces the essoin, and prays as above.—*HILLARY*. Then he can have it.

Note.

(67.) § Note that a man and his wife, defendants in a *Per quæ servitia*, would have pleaded.—*HILLARY*. The default is entered against you, and a day is given over, and the issues are lost; wherefore you can do nothing.—And the husband prayed that his wife might make an attorney.—*HILLARY*. We can not allow that.—The husband said that he and his wife were formerly here, and then took a *Prece partium*.—*HILLARY*. Then you ought not now to have a day by the Grand Distress.—And it was said that a *Venire facias* issued afterwards, and then the Grand Distress.

Entry sur  
disseisin:  
Voucher  
and coun

(68.) § Laurence de Lodelowe was vouchèd, and he came and asked wherefore, &c.—*Blaik*. Isabel, your mother,<sup>1</sup> whose heir you are, enfeoffed us by this deed,

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<sup>1</sup> She was his father's sister. See note p. 442.

Nos. 66-68.

(66.)<sup>1</sup> § *Nota* qune femme fust resceu par defaute A.D. 1341.  
son baroun, et pleda a issu, et al *Nisi prius* fist defaute; Nota de  
et a son jour en Bank un J. vient, et moustra qe la Recoit et de  
reversion apres le decees le baroun et la femme est a Nisi prius  
lui par son lees demene, et pria destre resceu. Et fust grante a  
contreplede, pur ceo qil duist aver venu quant le premier  
baroun fist defaute, qar adonques duist<sup>3</sup> jugement aver<sup>4</sup> jour.<sup>2</sup>  
passe sil nust este la survenue de sa femme; et auxi [Fitz.  
quant la defaute en pais al *Nisi prius* fust recorde Rescit,  
sur la femme, il duist donques aver venuz.—124.]  
*Non allocatur.*—*Thorpe*. Donques vous dioms qe la femme  
avoit fee; prest, &c.—*Et alii e contra.*—Et soerte fust  
trove, &c.—*Thorpe*. Nous prioms le *Nisi prius*, qar  
celui qe prie ne poet estre essone.—*HILL*. Cest verite;  
mes le demandant poet.—*Thorpe*. Il la renuncie, et  
prie *ut prius*.—*HILL*. Donques le poet il aver.

(67.)<sup>5</sup> § *Nota* qun homme et sa femme, defendants Nota.  
en un *Per quæ servitia*, voleint aver plede.—*HILL*. La  
defaute est entre sur vous, et jour done outre, et issues  
perdues; par quei vous poez rien faire.—Et le baroun  
pria qe sa femme poet faire attourne.—*HILL*. Ceo  
ne poms pas.—Le baroun dit qe lui et sa femme furent  
autrefoitz icy, et donques pristrent<sup>6</sup> *Prece partium*.—  
*HILL*. Donques ne duissez vous ore avoir jour par la  
graund destresse.—Et fust dit qe *Venire facias* issist  
apres, et puis la graund destresse.

(68.)<sup>7</sup> § Laurence de Lodelowe fust vouche, qe vient Entre sour  
et demanda par quei, &c.—*Blak*. Isabele, vostre mere, Disceisine:  
qi heir vous estes, nous enfeffa par ceo fet, et obligea Vocher et  
contreple

<sup>1</sup> From T., L., and 16,560.

<sup>2</sup> In L. the marginal note is  
Priere destre resceu.

<sup>3</sup> L., and 16,560, ust.

<sup>4</sup> aver is in T. alone.

<sup>5</sup> From T. and 16,560.

<sup>6</sup> 16,560, estre.

<sup>7</sup> From T., L., and 16,560. A  
writ of entry *sur disseisin* was  
(as appears by the record, *Placita*  
*de Banco*, Mich., 15 Edw. III.,  
R<sup>o</sup>. 453) brought by Richard de  
la Foreste, chaplain, against John  
de Boulwas, knight, in respect of

## . No. 63.

A.D. 1341. and bound herself and her heirs to warranty.—*Pole*.  
*terples of* We do not admit that the deed was made at the date  
*warranty.*

which it purports to bear; and we tell you that we ourselves, on a certain day, in a certain year, and at a certain place in the County of Worcester, before W. Scharshulle,<sup>1</sup> &c., brought an assise of Novel Disseisin against this same Isabel, whose deed he produces, and others, and the date of the original was the third day of April in the ninth year; process was continued until we recovered by verdict of the assise, and we had execution; and that deed was made between the date of our original and the execution; and we do not understand that by that deed, thus annulled by force of the recovery, we shall be charged with warranty.—*Blak.* If you wish to say that the estate which we have by the deed was annulled by that recovery, it is a way of pleading to admit the deed as valid at one time and to avoid it by a subsequent cause, or otherwise

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<sup>1</sup> The full name is supplied from | name of W. Thorpe is erroneously  
 the record. In L. and 16,560 the | substituted.

No. 68.

lui et ses heirs a garrantie.—*Pole*. Nous conisoms pas qe le fet se fist solonc purport de la date, et vous dioms qe nous mesmes, certain jour, an, et lieu, el counte de Wircestre, devant W. Sch., &c., portames une assise de novele disseisine vers mesme cele Isabele, qi fet il met avant, et autres, et la date del original fust le terce jour de April lan ix.; proces continue tanqe nous recoverames par verdit dassise, et avioms execucion; et ceo fet se fist entre la date de nostre original et lexecucion; et nentendoms pas qe par ceo fait, issi anienti par force del recoverir, nous serrons charge de garrantie.—*Blaik*. Si vous vollez dire qe lestat qe nous avoms par le fet fust anienti par cele recoverir, cest une voie a pleder de conustre le fet a un temps pleyn et le voider par cause puis, ou autrement anienter le

A.D. 1341.  
de gar-  
rantie.  
[Fitz.  
Counterple  
de Garrantie, 5.]

the manor of Orleton, except 30s. of rent in the same manor "in quod idem Johannes non habet ingressum nisi post disseisinam quam Agnes de Lodelowe inde injuste et sine judicio fecit prefato Ricardo." John vouched to warranty Laurence de Lodelowe, knight, cousin and heir of Isabella daughter of Laurence de Lodelowe. He comes and prays "quod ostendat ei per quod ei warrantizare debeat, &c." John says that Isabella being sister of one William, father of the aforesaid Laurence, of which Isabella Laurence, the vouchee, is heir, gave and granted "per chartam" to John the manor to hold to him and his heirs, with warranty. Profert was made of the "charta," which is set out at length. It purports that the manor was conveyed to John (who is therein described as John son of Roger de Boulwas), his heirs and assigns, and its date is Saturday

next after the Feast of St. Ceadde, (3 March) 9 Edw. III. Laurence, not admitting the date of the deed, says he ought not "per scriptum" "predictum" to warrant, because he brought an assise of Novel Disseisin against the aforesaid Isabella and others, before the Justices of Assise in the same county, in respect of the same tenements, the writ being dated 3 April, 9 Edw. III., whereon he recovered and had execution, and he says that the "scriptum" was made "medio tempore inter predictum diem impetrationis predicti brevis sui et executionem factam." He tenders averment, and prays judgment whether he ought to warrant by force of the deed. John says the "scriptum" was made before the aforesaid day of the purchase of the writ. Issue was joined thereon to the country. There were some adjournments, but the result does not appear.



## No. 68.

A.D. 1341. to annul the deed from all time.—HILLARY. He will not say anything else; and therefore consider whether you will abide judgment.—*Blaik*. We tell you that, long before the writ for that assise was purchased, we were seised by his mother's feoffment, and we continued that estate until after the judgment given, when he disseised us, whereupon we brought an assise and recovered, and thus we are in, continuing our estate by the feoffment of his ancestor; judgment whether by what he has said he can escape from the warranty.—*Pole*. We do not admit that he was enfeoffed by our ancestor before the date of our writ, or that he recovered by assise, as he has said; and we tell you that the deed by which he wishes to bind us was made between the date of our writ on which we recovered and the execution, which he does not deny; judgment, as above.—*Blaik*. The deed is used as being in the nature of a feoffment, by which possession passed, and in that respect it must be avoided; wherefore it can only be understood by your plea that you admit the feoffment and avoid it, as above, on the ground that it was made in the mean time between the date of your writ, &c., as above, and in that respect we traverse by saying that the feoffment was made before the writ was purchased, &c.—HILLARY. The deed would bind him to warranty, but not a feoffment; and whether it was made during<sup>n</sup> seisin or whether seisin passed, &c., to every effect he avoids it; wherefore consider whether you will abide judgment there; wherefore answer to that.—BASSET, *ad idem*. If the deed had been made during seisin, you ought to have employed it differently.—*Blaik*. The deed was made before the writ of assise was purchased; ready, &c.—And the other side said the contrary.

## No. 68

fet de tout temps.—HILL. Il ne voet autre chose dire; A.D. 1341. et pur ceo veez si vous volez demorer.—*Blak.* Nous vous dioms qe, long temps avant le bref purchace de cele assise, nous fumes seisi par le feffement sa mere, et cel estat continuames tanqe apres le jugement rendu, qil nous disseisi, de qi nous portames assise et recoverimes, et issi sumes einz, et continuames nostre estat par le feffement son auncestre; jugement si par cel qil ad dit puisse de la garrantie estourtre.—*Pole.* Nous ne conisoms pas qil fust feffe par nostre auncestre avant la date de nostre bref, ne qil recoverist par assise, come il ad parle; et vous dioms qe le fet par quel il nous voet lier se fist entre la date de nostre bref sur quel nous recoverimes et l'execucion,<sup>1</sup> quele chose il ne dedit pas; jugement, *ut supra.*—*Blak.* Le fet est use en nature de feffement, par quel possession passa, et a cele entent covient qil soit voide; par quei ceo ne poet estre entendu par vostre plees mes qe vous conises le feffement et qe vous le voides, *ut supra*, pur ceo qe ceo fust fait en le mene temps entre la date de vostre bref, &c., *ut supra*, et a cele entente nous traversoms qe le feffement se fist avant le bref purchace, &c.—HILL. Le fet lui liereit a la garrantie, et noun pas le feffement; et fust il fait en seisine ou qe seisine passa, &c., a chescun effect il le voide; par quei veiez si vous voillez la demorer; et pur ceo responez a cela.—BASSET, *ad idem.* Si le fet ust este fait en seisine, vous le duissez aver use autrement.—*Blak.* Le fet se fist avant le bref purchace dassise; prest, &c.—*Et alii e contra.*

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<sup>1</sup> The words et l'execucion are not in L.

## Nos. 69, 70.

A.D. 1841. (69.) § Note now touching a defendant who alleged Account. at the last day that the plaintiff was outlawed for felony, and had a day now to produce his record, and this by mainprise, because he came previously by the Exigent. And now one answers for him by attorney, by writ out of the Chancery, and is not admitted. And because a *Capias* should now have been awarded against the mainpernors, and an Exigent against him, he appeared, and said that he was ready to account.—*Blaik*. He can not be undefended in this plea, wherefore we can not have any thing except the account, and that we pray.—And auditors were assigned.—*Quære* whether before the auditors he will be admitted to say that he received less.

Note concerning homage done to William de Thorpe. (70.) § Note that John Leukenore and Elizabeth, his wife, did homage to William Thorpe in this way:— Both held their hands joined between the hands of W. Thorpe, and the husband spoke in this form: “We do you homage, and bear faith to you, for the lands which we hold of A., your cognisor, who has granted to you our services in B. and C., and the other vills, &c., against all people, saving the faith which we owe to the King and his heirs and to our other lords.” And both kissed him. And then they did fealty; and both held their hands on the book, and the husband said the words, and both kissed the book.

Nos. 69, 70.

(69.)<sup>1</sup> § *Nota* ore qe le defendant qe alegea a la A.D. 1341. dareyne journe qe le pleintif est utlage pur felonie, <sup>Account.</sup> et ad jour ore daver son record, et ceo par meynprise, pur ceo qil vint autrefoitz par lexigende. Et ore un respond pur lui par attourne, par bref de la Chauncellerie, et nest pas resceu. Et pur ceo qe *Capias* duist ore aver este agarde vers les meynpernours, et exigende vers lui, il aparust, et dit qil fust prest dacompter.—*Blaik.* Il ne poet pas estre noun defendu en ceo plee, par quei nous ne pooms autre chose aver forsqe lacompte, et ceo prioms.—Et auditours sont assignes.—*Quere* sil serra resceu devant auditours a dire qil resceust meyna.

(70.)<sup>1</sup> § *Nota* qe Johan Leukenore<sup>2</sup> et Elizabeth,<sup>4</sup> sa femme, firent homage a William Thorpe en cest manere:—Lun et lautre tiendrent joyntement lour mayns entre les mayns<sup>5</sup> W. Thorpe, et le baroun dit en ceste forme: "Nous vous fesoms homage, et foy vous portoms, pur les terres qe nous tenoms de A., vostre conisour, qe vous ad graunte noz services<sup>6</sup> en B. et C., et les autres villes, &c., contre touz gentz, sauf le "foy" qe nous devons au Roi et ses heirs et a noz "autres seignurages." Et lun et lautre lui baisèrent. Et puis ils firent<sup>7</sup> feaute; et lun et lautre tindrent lour mayns outre le livre, et le baroun dist les paroles, et ambedeux baisèrent le livre.

*Nota de homage fait a William de Thorpe.<sup>2</sup> [Fitz. Avowre, 109.]*

<sup>1</sup> From T., L., and 16,560.

<sup>2</sup> The marginal note in 16,560 is Attournement damage par baron et sa femme; in L. it is simply Attournement.

<sup>3</sup> T., Leucanore.

<sup>4</sup> L., E.

<sup>5</sup> The words entre les mayns are not in L.

<sup>6</sup> The words noz services are not in L.

<sup>7</sup> L., Roy.

<sup>8</sup> T., il fist instead of ils firent.

## No. 71.

A.D. 1341.  
Cessavit  
against an  
Abbot.

(71.) § *Cessavit* against the Abbot of Creake, supposing that he held of the plaintiff by the services of finding certain chaplains to sing divine services in her chapel, that is to say, matins, masses, vespers, &c., and feeding certain poor persons who were to receive daily certain loaves, &c., and by a certain rent, &c.—*Pole*. We do not admit that we are tenant of this freehold or that we hold of her, and we demand judgment of this declaration, which is not warranted either by Statute<sup>1</sup> or by common law; for he has comprised in his declaration services of different kinds, that is to say, some services a tender of the arrears whereof might, in this writ, save the tenancy, and some

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<sup>1</sup> 6 Edw. I. (Glouc.), c. 4; and 13 Edw. I. (Westm. 2), c. 41.

## No. 71.

(71.)<sup>1</sup> § *Cessavit* vers labbe de Creake, supposant qil A.D. 1341.  
tient de lui a trover certains chapleyns chauntantz Cessavit  
dyvyns services en sa chapele, saver, matyns, messes, vers un  
vespres, &c., et a pestre certains poures pernantz le Abbe.  
jour certainz payns, &c., et par certain rente, &c.—*Pole*.  
Nous ne conisoms pas estre tenant de ceo frank tene-  
ment, ne qe nous tenoms de lui, et demandoms juge-  
ment de ceste demoustrance, qe nest pas garrantie par  
statut ne comune ley; qar il ad compris<sup>2</sup> en sa demous-  
trance<sup>3</sup> services de divers natures, saver, ascuns services  
geux, en ceo bref, par tendre des arrerages purreint  
saufter la tenance, et ascuns services espirituelz qe

<sup>1</sup> From T., L., and 16,560, until otherwise stated. The record of this case is among the *Placita de Banco*, Mich., 15 Edw. III., R<sup>o</sup>. 457, d. It there appears that the action was brought by Margaret, late wife of John de Roos, against the Abbot of Creake, in respect of the services for lands in Gedney (Lincoln), which he held of her. She in her count or declaration alleged that the Abbot held of her by fealty and the service of 8s. per annum . . . "et per servitium in-  
"veniendi unum canonicum capel-  
"lanum, quotidie in capella Sancti  
"Thome Martyris sita in quodam  
"mesuagio, quod quondam fuit Jo-  
"hannis Dory, divina, videlicet  
"matutinas, horas, missam, ves-  
"peras, completorum, placebo, et  
"dirige, et alias orationes, cele-  
"braturum, et sustentandi ibidem  
"quotidie quinque pauperes, vide-  
"licet inveniendi cuilibet eorum  
"per diem unum panem ponderan-  
"tem quinquaginta solidos, et po-  
"tagium, et cervisiam, et inter  
"duos eorum unum ferculum car-  
"nium vel piscium vel alterius cibi

"secundum quod dies exigunt, et  
"alteri eorundem pauperum me-  
"dietatem unius ferculi in forma  
"prædicta, et quolibet altero anno  
"cuilibet eorum unam tunicam de  
"panno pro eis competenti." She  
also alleged that she was seised by  
the hand of the Abbot, as of her  
very tenant, "de prædictis fidelitate,  
"divinis servitiis, et sustentatione  
"pauperum, ut de feodo et jure,  
" &c., et de prædicto redditu in  
"dominio suo ut de feodo et jure,  
" &c.," and alleged the "cessa-  
"vit per biennium." The Abbot  
pleaded that he did not then hold  
the tenements, and did not hold  
them on the day of the purchase of  
the writ. Margaret replied that on  
the day of the purchase of the writ  
("scilicet prædicto primo die Maii")  
the Abbot did hold. Issue was  
joined thereon to the country. At  
*Nisi prius* the jury found that the  
Abbot did hold on the day of the  
purchase. Judgment was given for  
Margaret to recover seisin.

<sup>2</sup> L. and 16,560, pris.

<sup>3</sup> T. and 16,560, moustrance.

## No 71.

A.D. 1341. spiritual services which can not be tendered, and a cesser whereof simply forfeits the tenancy.—*Thorpe*. That is to our action by this writ; for if you oust us from the count you will oust us from our action.—*Stouford*. You shall have a special writ on your case, but on a common writ such a count can not be maintained.—*Thorpe*. If you hold of me by the services of reapings and ploughings, or by other services which are withdrawn, a *Cessavit* lies, although the arrears be tendered, as well as for suit to a Court.—*Stouford*. I do not know whether a *Cessavit* lies for such services withdrawn, but in our case two different services are comprised in the declaration, and by Statute<sup>1</sup> one writ is given for one and another writ for the other.—*HILLARY*. He can not in this case have two writs; wherefore your plea is to the action.—*Pole*. We are not tenants of the freehold; ready, &c.—*Thorpe*. You shall not be admitted to that, for you previously pleaded to the action.—This objection was not allowed.—*Thorpe*. In this writ of *Cessavit*, which is taken on the cesser and on the tenancy, if he take his plea by disclaimer in the freehold, that is not an answer without saying that he does not hold of us, and so taking his plea to the action, or otherwise admitting that he holds of us as mesne, but saying that the writ does not lie because another is tenant of the freehold.—*Pole*. If I be not tenant of the freehold, whether I hold of you or not, the writ does not lie; wherefore will you have the averment that I am not tenant of the freehold?—*Thorpe*. Ready, &c., that you are.—And the other side said the contrary.

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<sup>1</sup> 6 Edw. I. (Glouc.), c. 4; and 18 Edw. I. (Westm. 2), c. 41.

## No. 71.

ne pount estre tenduz,<sup>1</sup> et cesser des queux forfait la .A.D. 1341. tenance simplement.—*Thorpe*. Cest a nostre accion par cestui bref; qar si vous oustes de counte vous nous ousteres daccion.—[*Stouf*. Vous averes bref especial sur vostre cas, mes sur comune bref tiel cont ne poet estre meintenu.—*Thorpe*. Si vous tenez de moy par siers et arures qe sont sustret, par autrè service, *Cessavit* gist, coment serront arerages tenduz, ou de suyte a Court.]<sup>2</sup>—*Stouf*. Jeo ne say si *Cessavit* gist de tieux services sustretz, mes en nostre cas ij. divers services sont compris en la demoustrance,<sup>3</sup> et par statut un bref done de lun et un autre de lautre.—*HILL*. Il ne poet en ceo cas aver ij. brefs; par quei vostre plee est al accion.—*Pole*. Nous ne sumes pas tenantz<sup>4</sup> de frank tenement; prest, &c.—*Thorpe*. Vous ne serrez pas resceu, qar vous pledastes devant al accion.<sup>5</sup>—*Non allocatur*.—*Thorpe*. En ceo bref de *Cessavit*, qest pris de cesser et de la tenance, sil preigne son plee par desclamer el frank tenement, ceo nest pas respons sans dire qil ne tient pas de nous et issi prendre<sup>6</sup> son plee a laccion, ou autrement a conustre qil tient de nous come mene, mes qe le bref ne gist pas pur ceo qautre est tenant du frank tenement.—*Pole*. Si jeo ne soi pas tenant du frank tenement, le quel jeo tigne<sup>7</sup> de vous ou noun, le bref ne gist pas; par quei voillez laverement qe jeo ne su pas<sup>8</sup> tenant du frank tenement?—*Thorpe*. Prest, &c., qe si.—*Et alii e contra*.

<sup>1</sup> L., entendux.

<sup>2</sup> The words between brackets are from T. alone.

<sup>3</sup> T. and 16,560, moustrance.

<sup>4</sup> L., tenance.

<sup>5</sup> In L. the reports of this term end here. In the margin is the

following note in a later hand:—  
"Quare residuum istius termini in  
"alio libro."

<sup>6</sup> 16,560, prendroms.

<sup>7</sup> L., tienk.

<sup>8</sup> 16,560, suppose instead of su  
pas.



## No. 72.

A.D. 1341.

Writ of  
Entry *dum*  
*fuisset infra*  
*calalem.*

(72.) § Where the entry was supposed to have been by J., the tenant said that he entered by J. and D., J.'s wife, and that by a fine; judgment of the writ. —The demandant offered to aver his writ.—And it was counterpleaded that he should not be admitted thereto in opposition to the fine.—And thus the plea was pending for a long time.—HILLARY. It may be that he entered by J. and J.'s wife according to the purport of the fine, and that at a former time he entered by J. alone, and so the demandant's writ is good notwithstanding the fine, for the demandant has the advantage of bringing his writ according to the first entry.—*Thorpe*. He has pleaded the fine in abatement of our writ, and has given his plea to traverse our writ by matter of record, against which we have offered to aver our writ, which averment he has refused, and has abode judgment whether in opposition to the fine we shall be admitted to maintain our writ; and we demand judgment, since he has refused the averment, and we pray seisin.—*Blaik*. You take for your plea that the entry supposed by the fine may exist with the entry supposed by your writ; then that is not contradictory to the fine; and if it be not a traverse it can not make an issue.—*Thorpe*. At any rate you have taken it as a traverse, and thereupon abode judgment, refusing the averment.—HILLARY to *Blaik*. Will you accept the averment? otherwise we will award seisin.—*Blaik*. We tell you that the demandant, being of full age, released all his right by this deed.—*Pole*. We do not admit that the deed was made at the time which the date purports, or at that place; and we tell you that he was under age at the time of the making thereof.—*Blaik*. Of full age; ready, &c.—And the other side said the contrary.—*Blaik*. We pray a jury from Nottingham where the deed was made.—*Pole*. The deed is not denied,

## No. 72.

(72.)<sup>1</sup> § La ou lentre fust suppose par J., il dit A.D. 1841.  
 qil entra par J. et D. sa femme, et ceo par fyne; <sup>Bref de</sup>  
 jugement du bref.—Le demandant tendist daverer <sup>entre dum</sup>  
 son bref.—Et fust contreplede qil ne serra pas resceu <sup>fuit infra</sup>  
 contre la fyne.—Et issi ad pendu longement.—HILL. <sup>statem.</sup>  
 Il poet estre qil entra par J. et sa femme solonc  
 purport de la fyne, et de temps devant qil entra par  
 J. soul, et issi son bref bon *non obstante* la fyne,  
 qar<sup>2</sup> le demandant est a lavantage de porter son bref  
 solonc le primer entre.—*Thorpe*. Il ad plede par la  
 fyne al abatement de nostre bref, et ad done son plee  
 a traverser nostre bref par chose de record, contre  
 qi nous avoms tendu daverer nostre bref, quel avere-  
 ment il ad refuse, et ad demure en jugement si contre  
 la fyne serroms resceu de meyntenir nostre bref; et  
 demandoms jugement, del houre qil ad refuse laverement,  
 et prioms seisine.—*Blaik*. Vous pernez par  
 plee qe lentre suppose par la fyne poet estre ove  
 lentre suppose par vöstre bref; donques nest ceo pas  
 a contrarie; et si noun pas a travers il ne purreit  
 pas faire issu.—*Thorpe*. Au meynz vous lavez pris a  
 travers, et sur ceo demure en jugement, refusaunt  
 laverement.—HILL. a *Blaik*. Volez laverement? ou  
 nous agarderoms seisine.—*Blaik*. Nous vous dioms  
 qe le demandant, esteant de pleine age, releassa tout  
 son droit par ceo fet.—*Pole*. Nous ne conisoms pas  
 qe le fet se fist au temps quant la date purport, ne  
 a cel lieu; et vous dioms qil fust deinz age au temps  
 de la confeccion.—*Blaik*. De plene age; prest, &c.—  
*Et alii e contra*.—*Blaik*. Nous prioms pais de Notyng-  
 ham ou le fet se fist.—*Pole*. Le fet nest pas dedit,

<sup>1</sup> From T. and 16,560.<sup>2</sup> The words dum fuit infra statem are from 16,560 alone.<sup>3</sup> qar is not in 16,560.

## No. 73.

A.D. 1341. and therefore the jury shall come from the neighbourhood in which the land is demanded.—HILLARY. None can so well know his age at the time of the making thereof as those where the deed was made, but anything in avoidance of the deed shall be enquired of where the land is, such as an allegation that nothing passed, or that he was not seised when the deed was made.—*Pole*. We are not at one as to where the deed was made, and you will do in this case as if it had no date, and the jury shall come from the place where the land is.—HILLARY. Not so; but he who would employ the deed should state the place where the deed was made, and should have a jury thence.

*Cui in vita*  
within the  
degrees  
abated.

(73.) § Entry *sur cui in vita* in the *post*, after the lease which the husband of his ancestor made to Eudo.—*Thorpe*. Judgment of the writ, for the writ is in the words *post dimissionem quam fecit Edomi*, and that is not the name of a man or of a woman.—HILLARY. By the view you have accepted it as good, and we can not abate it by office.—*Thorpe*. Judgment of this writ in the *post*; for we tell you that Eudo, to whom he supposes the lease to have been made, leased the same tenements to one J. for the term of his life, so that after his death the same tenements should remain to this same Thomas against whom this writ is brought; and J. is dead, and Thomas is in possession in the remainder and by the deed of Eudo; so he would have a good writ within the degrees supposing his entry by Eudo.—*Gayneford*. We can not deny it, and we pray that this may be entered.—BASSET. The COURT adjudges that you take nothing by your writ.—*Quære*; for it seems by *Thorpe's* admission that the writ in the *post* was good; for there was no degree between J. who was tenant and Thomas, so that the demandant in such a case might elect his writ to be in the *post* or in the *per*.

No. 73.

par quei pais vendra del visne ou la terre est demande. A.D. 1341.

—HILL. Nul homme poet saver si bien de son age a temps de la confeccion come ses ou le fet se fist, mes ascune voidaunce du fet serra enquis ou la terre est, come rien ne passa, ou nient seisi quant le fet se fist.—*Pole*. Nous ne sumes pas a un ou le fet se fist, et vous ferrez en ceo cas auxi come il y avoit nul date, et le pais vendra del lieu ou la terre est.—

HILL. Nanil; mes celui qe usereit le fet dirreit<sup>1</sup> le lieu ou le fet<sup>2</sup> se fist, et avereit pais<sup>3</sup> illoeques.

(73.)<sup>4</sup> § Entre sur *Cui in vita* en le *post*, puis le lees qe le baroun sauncestre fist a Eude.—*Thorpe*. Jugement du bref, qar le bref voet<sup>5</sup> *post*<sup>6</sup> *dimissionem quam fecit Edomi*,<sup>7</sup> qe nest pas noun de homme ne de femme.—HILL. Par la vewe<sup>8</sup> vous lavez accepte bon, et par office nous nel poms abatre.—*Thorpe*. Jugement<sup>9</sup> de ceo bref en le *post*; qar nous vous dioms qe Eude, a qi il suppose le lees estre fet, lessa mesmes les tenementz a un J. a terme de sa vie, issi qapres son decees mesmes les tenementz remeindreint a mesme celui Thomas vers qi ceo bref est porte; et J. est mort, et Thomas est einz en le remeindre et par le fet Eude; issi avereit bon bref deinz les degrees supposant son entre par Eude.—*Gayn*. Nous ne poms dedire, et prioms qe ceo soit entre.—BASSET. Si agarde la COURT qe vous ne preignez rien par vostre bref.—*Quære*; qar il semble par la conisance *Thorpe* qe le bref fust bon en le *post*; qar entre J. qe fust tenant et Thomas il ny avoit pas degree, issi qe le demandant en tiel cas purreit elire son bref en le *post* ou en le *per*.

<sup>1</sup> 16,560, durreit.

<sup>2</sup> 16,560, fest.

<sup>3</sup> pais is not in 16,560.

<sup>4</sup> From T. and 16,560.

<sup>5</sup> voet is not in 16,560.

<sup>6</sup> 16,560, puis.

<sup>7</sup> T., Edoni.

<sup>8</sup> 16,560, voie.

<sup>9</sup> jugement is not in 16,560.

## Nos. 74-76.

A.D. 1341. (74.) § John de St. Paul, prebendary of the prebend of B. in the church of St. Peter of York, brought a writ of Entry on the alienation of his predecessor, prebendary thereof *de facto*, in the words *sine assensu Archiepiscopi Eboracensis, et Decani et Capituli, &c.*

Note concerning outlawry returned by the Sheriff on a writ of Trespass.

(75.) § The Countess of Pembroke brought a writ of Trespass against two persons, and process was continued until the Exigent issued; and now the Sheriff returned that they were solemnly called at five County Courts, and did not come, *et ideo utlagatus est.*—*Thorpe*. We pray that the Sheriff may be amerced for his insufficient answer, and we pray a writ to the Coroners to certify you of the outlawry.—*HILLARY*. We are not apprised that they are outlawed, for the writ is not served; and suppose that they were outlawed in the County Court, and no writ were returned, you would have no other process but a new Exigent.—*Thorpe*. That can not be; for if they be outlawed it is of record in the Coroner's roll, and in the Eyre, by virtue of that record, their lands will be seized and their chattels forfeited; and although his return is in false Latin, being in the singular number where it ought to be in the plural number, still it may appear by his return that they are outlawed.—*HILLARY*. Sue a fresh Exigent if you will, for you shall not have any other process.

Execution on a fine: Aid-prayer in *Scire facias*.

(76.) § Note that in execution on a fine the tenant for life prayed aid, by reason of reversion, of the heir of him by whose lease he held; and because the heir was under age he prayed that the parol might demur.—*Thorpe*. Aid-prayer goes to delay, and is against the Statute<sup>1</sup>, for he will be summoned and may be essoined; and although aid should be grant-

<sup>1</sup> 18 Edw. I. (Westm. 2), c. 45.

## Nos. 74-76.

(74.)<sup>1</sup> § Johan de Seint Poule,<sup>2</sup> provandrer de la A.D. 1341. provandre de B. en leglise Seint Pier Deverwyk, porta bref dentre de lalienacion son predeceussour provandrer de ceo en fet *sine assensu Archiepiscopi Eboracensis, et Decani et Capituli, &c.*

(75.)<sup>1</sup> § La Contesse de Penbroke porta bref de trespas vers ij., et proces continue tanqe lexicgende issist; et ore le Vicounte retourne qil furent solempnement demandez a v. cōntes, et ne viendrent pas, *et ideo utlagatus est.—Thorpe.* Nous prioms qe le Vicounte soit amercie pur le meyns suffisant respons, et prioms bref as Coroners de vous acerter del utlagerie. —HILL. Nous ne sūmes pas apris qil sont utlages, qar le bref nest pas servy; et jeo pose qil fuissent utlages en conte, et nul bref fust retourne, vous naverez autre proces forsqe novel exigende.—*Thorpe.* Ceo ne poet estre; qar sil soient utlages cest de record en rolle de Coroner, et en eyre, par cel record, ses terres serront seiši et chateus forfaitz; et tout eit il retourne faux latyn, en singular nombre ou il serreit en plurel nombre,<sup>3</sup> uncore il poet apparer par son retourn qil sont utlages.—HILL. Suez novel exigende si vous voilles, qar autre proces naverez vous.

(76.)<sup>1</sup> § Nota qen execucion hors dune fyne le tenant a terme de vie pria eide, par cause reversion, del heir celui de qi lees il tint; et pur ceo qil est deinz age pria qe la parole demurast.—*Thorpe.* Leide prier<sup>5</sup> chiet en delaye, et est contre estatut, qar il serra somons,<sup>6</sup> et purra estre essone; et tout serreit

Nota de  
utlagerie  
retourne  
par Vi-  
counte en  
bref de  
trespas.

Execucion  
hors de  
une fyne:  
Eyde prier  
en Scire  
facias.<sup>4</sup>

<sup>1</sup> From T. and 16,560.

<sup>2</sup> T., Poela.

<sup>3</sup> nombre is not in 16,560.

<sup>4</sup> The words Eyde prier en Scire facias are from 16,560 alone.

<sup>5</sup> prier is not in T.

<sup>6</sup> 16,560, resomons.

## . No. 77.

A.D. 1341. able he would not have his age, for this is only to do execution of a matter adjudged.—HILLARY. Can not he in whom the right is plead in the right? And this he can not acknowledge during his nonage when it has descended to him.—*Thorpe*. Sir, by the reason you give, although judgment were given against the ancestor, and he died seised, execution not having been had during his life, the heir would have his age in a *Scire facias*.—HILLARY. Perchance he would have it; but you are not in a similar case; wherefore we hold the tenancy to be such as is alleged by the party.—*Thorpe*. He is of full age, and we pray a writ to cause him to come.

Entry sur  
cui in vita.

(77.) § A writ was brought in the *post*.—*Thorpe*. We tell you that the tenements demanded are parcel of the manor of G., which manor was in the seisin of one W. and A. his wife, and W. leased the tenements demanded to Isabel, against whom this writ is brought, for her life, and afterwards W. and his wife granted the manor of G. in demesne and service to Richard Daunsel, which Richard granted the manor, &c., to W. and A. his wife for the term of their lives, with remainder to Richard Talbot, to hold to him and his heirs, by reason of which gift and grant Isabel, the tenant, attorned; and we tell you that, after the death of W., A. his wife granted and confirmed her estate in the reversion to Richard Talbot, and thus the fee reposes in him, and we pray aid of him.—*Derworthy*. He shows first that W. and A. his wife were seised of the manor; and we tell

## No. 77.

eide grantable il navereit pas son age, qar ceo nest A.D. 1341, forsque execucion de chose ajuge.—HILL. Ne poet celui en qi le droit est pleder en<sup>1</sup> le droit? Et ceo ne poet il conustre durant son noun age quant ceo lui<sup>2</sup> est descendu.—*Thorpe*. Sire, par vostre resoun, mesqe jugement fust taille vers launcestre, et il morust seisi, execucion nient fait en sa vie, leir en *Scire facias* avereit son age.—HILL. Par cas il avereit; mes vous nestes pas en semblable cas; par quei nous tenoms la tenance tiele come est alegge de partie.—*Thorpe*. Il est de pleine age, et prioms bref de lui faire venir.

(77.)<sup>3</sup> § Bref fust porte en le *post*.—*Thorpe*. Nous vous dioms qe les tenementz demandez sont parcele del manoir<sup>4</sup> de G., le quel manoir<sup>5</sup> fust en la seisine un W. et A. sa femme, et W. lessa les tenementz demandez a Isabele, vers qi ceo bref est porte, a sa vie, et puis W. et sa femme granterent le manoir de G. en demene et service a Richard Daunsele, le quel Richard graunta le manoir, &c.,<sup>7</sup> a W. et A. sa femme a terme de lour vies, le remeindre a Richard Talbot, a lui et ses heirs, par quel doun et graunt Isabele tenant sattourna; et vous dioms qapres la mort W., A.<sup>8</sup> sa femme graunta<sup>9</sup> et conferma son estat de la reversion a Richard Talbot, et issi repose le fee en lui, et prioms eide de lui.—*Derworth*. Il moustre primes qe W. et A. sa femme furent seisiz du manoir;

Entre sour  
cui in vita.<sup>4</sup>  
[Fitz.  
Graunte,  
62.]

<sup>1</sup> T., ne.

<sup>2</sup> 16,560, celui instead of ceo luy.

<sup>3</sup> From T. and 16,560.

<sup>4</sup> The marginal note is from 16,560 alone.

<sup>5</sup> The words del manoir are not in 16,560.

<sup>6</sup> manoir is not in 16,560.

<sup>7</sup> The words le manoir, &c. are not in 16,560.

<sup>8</sup> 16,560, et A.

<sup>9</sup> T., continua.



## No. 77.

A.D. 1341. you that this was in right of the wife, so that when the husband leased a parcel for life, the reversion must necessarily have been a reversion to him and his heirs, whereby that parcel in demesne and reversion was severed from the manor; wherefore that reversion could not pass by the gift and grant of the manor afterwards made, although the tenant attorned.—This was not allowed, which is strange.—*Derworthy*. He affirms two reversionary estates in Richard Talbot: one is the estate of A. which she had for life in the reversion, during the life of which A. he could only have her estate; the other is the estate of Richard after the death of A. by force of the remainder; wherefore let him show by reason of which estate he prays aid.—*HILLARY*. By reason of both estates; for the whole is in Richard now. Therefore consider whether you will say anything else.—*Derworthy*. We tell you that Richard Daunsel never had anything in the reversion by grant from W. and A. his wife; ready, &c.—*Thorpe*. He does not deny that W. and A. gave and granted the manor in demesne and service to Richard Daunsel, and that the tenant attorned; judgment.—*Blaik*. We can not have any traverse as to whether the manor was given or not, but it is only necessary to answer as to the reversion of the tenements demanded; and we destroy the inheritance in him of whom you pray aid according to the manner in which you have yourself set it forth; judgment.—*HILLARY*. You would have a good issue that the manor was not given without anything else; and, since you do not deny that the manor was given as above, let him have the aid.—*Quære*.

## No. 77.

et vous dioms qe ceo fust du dreit la femme, issi qe A.D. 1341. quant le baroun lessa parcele a terme de vie, il covenoit<sup>1</sup> qe la reversion fust reverse en lui et ses heirs, par quei cele parcele en demene et reversion fust severe del manoir; par quei par doun et graunt apres fait del manoir ceste reversion ne poet passer, tout attourna le tenant.—*Non allocatur, quod mirum est.—Derworth.* Il afferme deux estatiz de reversion en Richard Talbot: la une est lestat A. qil avoit a terme de vie en la reversion, vivante quele A. il ne poet aver forsqe son estat; un autre est lestat Richard apres la mort A. par force del remeindre; par quei moustre par resoun de quel estat il prie eide.—HILL. Par resoun de lun estat et lautre; qar tout est en lui ore. Par quei veez si vous volez autre chose dire.—*Derworth.* Nous vous dioms qe Richard Daunsel navoit unqes rien en la reversion del graunt W.<sup>2</sup> et A. sa femme; prest, &c.—*Thorpe.* Il ne dedit pas qe W. et A. ne<sup>3</sup> donerent et granterent le manoir en demene et service a Richard Daunsel, et qe le tenant attourna; jugement.—*Blaik.* Le quel le manoir fust done ou noun nous ne pooms aver nul travers, mes soulement covient respondre a la reversion des tenementz demandez; et nous destruoms enheritance en celui de qi vous priez eide par la manere qe vous nous avez livre mesme; jugement.—HILL. Vous avez bon issue qe le manoir ne fust pas done sanz<sup>4</sup> plus; et, pus qe vous ne dedites pas qe le manoir fust done *ut supra*, eit leide.—*Quære.*

<sup>1</sup> 16,560, covent.<sup>2</sup> 16,560, et W.<sup>3</sup> ne is not in 16,560.<sup>4</sup> The MSS., ove; sanz is from Fitz.

## Nos. 78, 79.

A.D. 1341. (78.) § Formedon in the descender. The count was entered on the roll, and view was demanded, and afterwards *Thorpe* said:—Count against us.—*Gayneford*. We have counted before, and the count is entered on the roll, and you answer not thereto; judgment, and we pray seisin.—*Thorpe*. The law requires that after view you count, and that the tenant defend in accordance with the formula of the Court, and he can not do that until the count be counted; and on a writ of Right, if the demandant did not count after view he would lose the action; and, since you do not say anything against us, judgment.—*Gayneford*. And we demand judgment, and pray seisin of the land, for certainly I will never count any more on this writ.—And then *Thorpe* did not dare to abide judgment, and he prayed aid of the King by reason of the feoffment by the King's grandfather; and on the charter being shown he had the aid.

Avowry. (79.) § Avowry, by reason of the seisin of the father, on the heir of his tenant; and the plaintiff was a stranger.—*Thorpe*. We tell you that his father, on whose seisin he avows, released by this deed all his right to the father of the person on whom he avows, whose estate in the land we have; judgment whether in opposition to the deed he can maintain the avowry.—*Gayneford*. He is a stranger to the avowry, and there is nothing in demand against him; judgment whether such a plea lies in his mouth, and we pray the Return.—*Thorpe*. Is it the deed of your ancestor? for it extinguishes the seignory.—*Gayneford*. Use it in evidence, for you shall not have any other advantage.—*Thorpe*. Suppose that the deed was made in

## Nos. 78, 79.

(78.)<sup>1</sup> § Forme doun en descender. Conte fust entre A.D. 1841.  
 en rolle, et vewe demande, et apres dit *Thorpe* :—Contes Forme doun, ou apres vew  
 vers nous.—*Gayn*. Nous avoms autrefoitz conte, quel *Gayn*. ne  
 est entre en roule, a qi vous responez nient ; jugement, voleit en nul maner  
 et prioms seisine.—*Thorpe*. La ley voet qapres vewe counte  
 qe vous contes, et qe tenant defend<sup>3</sup> les motz de la pur ceo qil avoit  
 Court, et ceo ne poet il saunz ceo qe counte<sup>4</sup> fust counte  
 counte ; et en bref de dreit, si le demandant<sup>5</sup> ne devant.<sup>2</sup>  
 countast apres vewe il perdereit accion ; et, del houre  
 qe vous ne dites rien<sup>6</sup> vers nous, jugement.—*Gayn*.  
 Et nous jugement, et prioms seisine de terre,<sup>7</sup> qar<sup>8</sup>  
 certes jammes ne contray jeo pluis a ceo bref.—Et  
 puis *Thorpe* nosa pas demorer, et pria eide du Roi  
 par feffement lael le Roi ; et la chartre moustre il ad  
 eide.

(79.)<sup>1</sup> § Avowere, de<sup>9</sup> la seisine le pere, sur leir Avowere.  
 son<sup>10</sup> tenant ; et le pleintif est estrange.—*Thorpe*.  
 Nous vous dioms qe son pere, de qi seisine il avowe,  
 relessa par ceo fet tout son dreit al pere celui sur  
 qi il avowe, qi estat nous avoms en la terre ; jugement  
 si contre le fet puisse lavowere maintenir.—*Gayn*. Il  
 est estrange a lavowere,<sup>11</sup> et il y ad rien en demande  
 vers lui ; jugement si tiel plee en sa bouche y gise,  
 et prioms retourn.—*Thorpe*. Est ceo le fet vostre  
 auncestre ? qar ceo esteint seignurie.—*Gayn*. Uses  
 le en<sup>12</sup> evidence, qar vous naverez autre avantage.—  
*Thorpe*. Jeo pose qe le fet se fist en autre counte,

<sup>1</sup> From T. and 16,560.<sup>2</sup> Except the word Formedon, the marginal note is from T. alone.<sup>3</sup> 16,560, defendaunt.<sup>4</sup> T., tout.<sup>5</sup> T., tenant.<sup>6</sup> 16,560, deditez pas, instead of dites rien.<sup>7</sup> The words de terre are not in 16,560.<sup>8</sup> T., et.<sup>9</sup> T., sur.<sup>10</sup> 16,560, la.<sup>11</sup> The words a lavowere are not in T.<sup>12</sup> en is not in 16,560.

## No. 80.

A.D. 1341. another county, they could not take evidence therefrom where the taking was made. And suppose that his ancestor had released by a fine, of which a jury could not have cognisance, would he not answer? And if I were enfeoffed to hold of the chief lord, and I had a deed by which my feoffor was enfeoffed to hold by a less service, I should compel the lord to avow according to the specialty; and if I could plead a specialty whereby to have a discharge as to part, why not as well as to the whole?—*Gayneford*. In that case you would plead as a privy, and here you plead as a stranger.—*KELSHULLE*. Would he not put you to answer to your seisin of the demesne since the Statute?<sup>1</sup>—*Gayneford*. It would be only evidence for him who is a stranger.—And they were at judgment whether the plea lies in his mouth.—And they were adjourned.

AVOWRY. (80.) § The Prior of B. avowed for the reason that Oxlese, to wit, the place where the taking, &c., is within his several wood of his manor of K., where no one ought to common; and because he found the mare depasturing and injuring his grass he took it for damage.—*Blaik*. We tell you that the Prior leased all the demesnes of the manor, except the wood, to us for our life, and we tell you that the taking was made without the wood, and within the demesnes which were our freehold on the day of the taking; judgment.—*Thorpe*. You have admitted that the wood is our several, and we tell you that the taking was made within the wood; ready, &c.—*Blaik*. You shall answer whether the wood be your several or our common.—*HILLARY*. He need not, for by your plea you have not denied that whatever is within the

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<sup>1</sup> 18 Edw. I. (*Quia emptores*).

## No. 80.

il ne purreint pas prendre evidence de ceo ou la prise A.D. 1341. se fist. Et poses qe par fyne son auncestre ust relesse, de quel pais ne purreit aver conisance, ne respondreit il pas? Et si jeo fuisse feffe a tenir du chief seignur, et jeo usse fait par quel moun<sup>1</sup> feffour fust feffe a tenir par meyndre service, jeo chacera le seignur davower accordant al especialte; et si je purroi par especialte pleder ou<sup>2</sup> descharger de parcele,<sup>3</sup> pur quei nient auxi bien del entier?—*Gayn*. La pledrez vous come prive, et si pledez vous come estrange.—*KELS*. Ne vous mettreit il a respondre a vostre seisine del demene puis statut?—*Gayn*. Ceo ne serreit forsque evidence pur celui qest estrange.—*Et sunt ad judicium* si le plee gise en sa bouche.—*Et adjornantur*.

(80.)<sup>4</sup> § Le Priour de B. avowa pur la resoun qe *Avowere*. Oxlese, saver, le lieu ou la prise, &c., est deinz son several bois de son manoir de K., ou nul ne deit comuner; et pur ceo qil trova la jument peessaunt<sup>5</sup> et defoulaunt sa herbe il prist pur damage. — *Blaik*.<sup>6</sup> Nous vous dioms qe le Priour nous lessa toutz les demeyns del manoir pur nostre vie, sauf le boys, et vous dioms qe la prise se fist hors du bois, en les demeyns qe fust nostre frank tenement jour de la prise; jugement.—*Thorpe*. Vous avez conu qe le bois est nostre several, et vous dioms qe la prise se fist deinz le bois; prest, &c.—*Blaik*. Vous respondrez si le bois<sup>7</sup> soit vostre<sup>8</sup> several ou nostre comune.—*HILL*. Il ne bosoigne pas, qar par vostre plee vous navez<sup>9</sup> pas dedit qe quanqe est deinz le bois est

<sup>1</sup> 16,560, nous.<sup>2</sup> The words pleder ou are not in T.<sup>3</sup> 16,560, partie.<sup>4</sup> From T. and 16,560.<sup>5</sup> 16,560, cressaunt.<sup>6</sup> T., *Gayn*.<sup>7</sup> 16,560, lieu.<sup>8</sup> MSS., nostre.<sup>9</sup> navez is not in 16,560.

## No. 81.

A.D. 1341. wood is several; wherefore it is sufficient to maintain that the place is within the wood.—*Bluk.* We tell you that Oxlese, where the taking was made, is without the wood; ready, &c.—And the other side said the contrary.

False Judgment, where a resumption was granted to the heir of him who sued the writ, because he died pending the suit.

(81.) § Herbert de St. Quintin sued a writ of False Judgment against B. and his wife, and after errors had been assigned, and they had been put on an inquest as to the customs, Herbert died; wherefore Herbert the son of Herbert had a writ upon his case to the Justices to admit him to continue suit. Therefore a resumption issued against B. and his wife; to this writ the Sheriff returned that they had nothing. Therefore a writ issued to resumption the ter-tenants of the land of which judgment was had; to which writ they came, and alleged that on the day of the re-summions they were not tenants; judgment of the writ.—*Thorpe.* You see clearly how this writ is dependent on the original writ of Error, to which writ he pleaded as tenant; and although the suit ceased by the death of our ancestor, still it is now revived by the resumption on the first writ; wherefore he can not in this suit allege nontenure. Besides, nontenure will not abate this writ, for this writ is in its nature of force like to that of a writ of Error, in which case nontenure will not abate the writ, but garnishment after judgment reversed shall issue against another if he be tenant. And suppose that we would maintain that he is tenant, and the issue should pass

## No. 81.

several; par quei suffist de meyntener qe le lieu est A.D. 1341. deinz le bois.—*Blaik.* Nous vous dioms qe Oxlese, ou la prise se fist, est hors del bois; prest, &c.—*Et alii e contra.*

(81.)<sup>1</sup> § Herbert de Seint Quintin suyst un bref de faux jugement vers B. et sa femme,<sup>2</sup> et apres erreurs assignes, et qils furent mys en enquest sur les usages, Herbert<sup>4</sup> morust; par quei Herbert fitz Herbert avoit bref sur son cas as Justices de lui rescivere a<sup>5</sup> continuer<sup>6</sup> avant la suyte. Par quei resomons issist vers B. et sa femme<sup>7</sup>; a quel bref<sup>8</sup> le Vicounte retourna qil navoint rien; par quei bref issist a<sup>9</sup> resomondre les<sup>10</sup> en la terre dont le jugement se fist; a quel bref il vindrent, et aleggerent qe jour de la resomons il ne furent pas tenantz; jugement del bref. —*Thorpe.* Vous veez bien coment cestui bref est dependant<sup>11</sup> del bref original derroure, a quel bref il plede come tenant; et tout cessa la suyte par la mort nostre auncestre, uncore il est ore resussite par la resomons sur le primer bref; par quei il ne poet en<sup>12</sup> ceste suyte nountenue allegger. Ovesqe ceo, nountenue nabatera pas ceo bref, qar cestui bref est en sa nature de tiel force come bref derroure, en quel cas nountenue nabatera pas bref, mes garnisement apres jugement reversee issera vers autre sil soit tenant. Et jeo pose qe nous vodroms meintener qil est tenant,

Faux  
Jugement,  
ou reso-  
mons fuyt  
grante al  
heir cely  
qe siwint  
le bref, pur  
ceo qil  
morust  
pendant  
la suyte.<sup>2</sup>  
[Fitz.  
Faux  
Jugement,  
9.]

<sup>1</sup> From T. and 16,560 until otherwise stated. This is a continuation of No. 45 next above.

<sup>2</sup> The marginal note, except the words Faux Jugement, is from T. alone.

<sup>3</sup> The words et sa femme are not in 16,560.

<sup>4</sup> 16,560, Barton.

<sup>5</sup> 16,560, de.

<sup>6</sup> MSS., comuner.

<sup>7</sup> The words et sa femme are not in 16,560.

<sup>8</sup> T., jour.

<sup>9</sup> T., de.

<sup>10</sup> 16,560, le tenant.

<sup>11</sup> 16,560, apendaunt.

<sup>12</sup> T., a.



## No. 81.

A.D. 1341. for us, still the judgment would not be affirmed or disaffirmed.—*Pole*. This writ is not similar to a writ of Error, for on a writ of Error whatever shall lie in trial by record shall be taken from the record, but in this case one shall, perhaps, plead to issue to the country, to which issue no one shall by law be party except the tenant—*HILLARY* (*ad idem*). The plaintiff is suing to have back his land, and this is not reasonable without naming the tenant; for one shall not have a *Scire facias* upon this writ.—*Thorpe*. Sir, he will; for after judgment reversed, if he should die before execution, one would have garnishment against the ter-tenant.—*HILLARY*. It is true in that case on account of the mischief.—And they were at judgment on the abatement of the writ.—And they were adjourned.—Afterwards the exception was waived, and they were at issue to the country, as they were before in the life of the father, that is to say, in as much as error was assigned in that seisin was awarded where the tenant appeared by attorney and would have answered, and was not admitted because the attorney was admitted as attorney before the Steward and out of the Court, whereas the Steward had no warrant out of the Court to admit an attorney.—And upon that they were at traverse as to the custom.—Another error was in that the husband and his wife, who were demandants, made protestation of suing in the nature of Dower, and did not say by the endowment of what husband or that they claimed of the wife's dower, and thus the protestation was insufficient.—And this was maintained to be good by the custom.—And upon that they were at traverse.—Afterwards, in Michaelmas term in the following year, a jury came through the Sheriff, composed of persons resiant within the Ancient Demesne, but their lands were in the geldable, for otherwise the party would

## No. 81.

et lissu<sup>1</sup> passast pur nous, uncore ne serra le juge- A.D. 1341.  
ment afferme ne desafferme.—*Pole*. Cestui bref nest  
pas semblable a bref derroure, qar la quantqe cherra sur  
le triement de record<sup>2</sup> serra pris del record, mes en  
ceo cas homme pledra a issu de pais, par cas, a quel  
issu nul par ley serra partie forsqe tenant.—*HILL*.  
(*ad idem*). Le pleintif est de reaver sa terre, et ceo  
nest pas resoun saunz nomer le tenant; qar homme  
navera pas *Scire facias* hors de ceo bref.—*Thorpe*.  
Sire, si avera; qar<sup>3</sup> apres le jugement reverse, sil  
deviast avant execucion, homme avereit garnisement  
vers terre tenant.—*HILL*. Cest verite la<sup>4</sup> par le mes-  
chief.—Et sont en jugement sur labatement du bref.  
—*Et Adjornantur*.<sup>5</sup>—*Postea* le chalenge fust weyve,  
et sont a issu de pais, *ut prius fuerunt in vita*  
*patrie*, saver, qe la ou errour fust assigne de ceo qe  
seisine fust agarde ou le tenant fust par attourne  
et voleit aver respondu, et ne fust pas resceu pur  
ceo qil fust resceu attourne devant le seneschal et  
hors de Court, qe nul garrant avoit hors du Court  
de resceivere attourne.—Et sur ceo sont a travers  
del usage.—Autre errour de ceo qe le baroun et sa  
femme, qe furent demandantz, firent protestacion  
de suyr en nature de dower, et disoient pas par  
dowement de quel baroun ne qil clamerent del  
dower la femme, issi la protestacion meyns suffi-  
saunt.—Et ceo fust meintenu pur bon par les usages.  
—Et sur ceo sont a travers.—*Postea, termino Michaelis*  
*anno proximo*, lenquest vient par Vicounte, de gentz  
resceaunz deinz lanciene demene, mes lour terres  
furent en geldable, qar autrement la partie navereit

<sup>1</sup> T., lissise.<sup>2</sup> The words de record are not  
in T.<sup>3</sup> qar is not in 16,560.<sup>4</sup> la is not in 16,560.<sup>5</sup> The report ends here in 16,560,  
and the rest is from T. alone.

## No. 81.

A.D. 1841. not have the Attaint; and the verdict passed for the plaintiff. Therefore it was adjudged that he should have back the land, and the issues for his time taxed by the jury, and that the others should be in mercy, and the Court also, for the false judgment, and that the amercement should be affeered by the Justices, and that the suitors should be amerced in 10*l.* by assessment of the Court.—And note that he who sued the writ of False Judgment was a suitor of the Court.—*Quære* how he shall be discharged, since the judgment is several.

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## No. 81.

pas latteint; et passa pur le pleintif. Par quei agarde A.D. 1341. fust qil reust la terre, et les issues de son temps taxez par lenquest, et les autres en la mercy, et la Court auxi, pur le faux jugement, et serroit affure par les Justices, *et sectatores in misericordia x. li. per taxationem Curie.*—Et nota qe celui qe suyst fust un suytier. — *Quære* coment il serra descharge, quant lagard est several.

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( 473 )

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APPENDIX.

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## APPENDIX A.

ASSISE OF FRESH FORCE : CASE NO. 20 OF EASTER TERM,  
15 EDWARD III. *See also* CASE NO. 24 OF MICHAELMAS TERM.

*Extracts from the Record of Proceedings in Error in the  
King's Bench.*<sup>1</sup>

The record commences with an enrolment of a writ of *Pluries Distringas* directed to the Sheriff of Oxford:—  
“Præcipimus tibi sicut pluries tibi præcepimus quod distringas Henricum de Stodlee Maiorem villæ Oxoniæ [and the bailiffs of the said town]. . . . et quod habeas corpora eorum coram nobis, a die Paschæ in xv. dies, ubicunque tunc fuerimus in Anglia, ad respondendum tam nobis quam Priori Domus Fratrum Ordinis Sancti Augustini in suburbio Oxoniæ de placito quare cum nos nuper, ad prosecutionem Fratris Johannis de Saltford, nuper Prioris Domus prædictæ, nobis suggerentis in recordo et processu ac etiam in redditione iudicii cujusdam assisæ friscæ forcisæ. . . . errorem intervenisse manifestum, eisdem ballivis pluries præcepimus quod, si iudicium inde redditum esset, tunc recordum et processum ejusdem assisæ cum omnibus ea tangentibus nobis sub sigillis eorum distincte et aperte sine dilatione mitterent et breve nostrum quod eis inde venit, vel causam nobis significarent quare mandato nostro alias inde directo minime paruerunt, vel quod essent coram nobis in Crastino Ascensionis Domini proxime præterito, ubicunque tunc essemus in Anglia, ostensuri quare mandatis nostris prædictis totiens eis inde directis parere contempserunt, et breve nostrum eis inde directum haberent tunc ibidem, iidem Maior et Ballivi, spretis mandatis nostris prædictis, ut accepimus, recordum et processum prædicta nobis mittere vel saltem causam quare id facere noluerunt vel non potuerunt nobis significare, vel coram nobis ad diem illum venire aut breve nostrum eis inde directum ibidem retournare non curaverunt, in nostri contemptum manifestum et prædicti Prioris dispendium non modicum et gravamen, et ad audiendum

<sup>1</sup> *Placita coram Rege, Easter, 15 Edw. III., R. 63.*



judicium suum de pluribus defaultis. Et habeas ibi hoc breve. Teste R. de Wylughby apud Westmonasterium xxvij. die Januarii anno regni nostri tertio decimo.

Ad quam Quindenam Paschæ videlicet anno regni Regis nunc tertio decimo coram domino Rege venerunt prædicti Maior et Ballivi, et protulerunt hic in Curia recordum et processum assise friscæ forcis prædictæ in hæc verba:—

Record of  
Assise of  
Fresh Force.

“Placita friscæ forcis loco assise novæ disseisinæ tenta apud Oxoniam coram Maiore et Ballivis ejusdem villæ Oxoniæ, per billam de frisca forcis, secundum consuetudinem dictæ villæ Oxoniæ, die Lunæ proxima ante Festum Annunciationis beate Mariæ Virginis anno regni Regis Edwardi tertii post conquestum duodecimo.

“Magister Robertus de Trengge, Custos Domus Scholarium de Mertone Oxoniæ, questus fuit coram Maiore et Ballivis villæ Oxoniæ de Fratre Johanne de Saltford, Priore Domus Fratrum Ordinis Sancti Augustini in suburbio Oxoniæ extra Smythegate, et [several others] confratribus ejusdem Prioris [and three others besides] de placito friscæ forcis per billam, loco assise novæ disseisinæ, secundum consuetudinem dictæ villæ Oxoniæ, de eo quod disseisiverunt ipsum de libero tenemento suo in suburbio Oxoniæ extra Smythegate in parochia Sanctæ Crucis de Haliwell. . . . Prætextu cujus querelæ prædictæ præceptum fuit Ricardo de Pirye, Subballivo villæ Oxoniæ, secundum consuetudinem ejusdem villæ Oxoniæ, die dominica proxima ante dictum Festum Annunciationis beate Mariæ Virginis, quod summoneret per bonos summonitores xxiiij<sup>or</sup> prebos et legales de visneto de parochia quod essent apud Gildam Aulam Oxoniæ coram præfatis Maiore et Ballivis prædicto die Lunæ tunc proximo sequente, ad recognoscendum si Frater Johannes de Saltford, Prior Domus Fratrum Ordinis Sancti Augustini [and the others named in the Bill]. . . . injuste et sine judicio disseisiverunt prædictum Magistrum Robertum de Trengge, . . . et interim tenementum illud viderent, &c.; et quod poneret per vadium et salvos plegios prædictos Priorem [and the rest], vel ballivos suos, si ipsi inventi non fuissent, quod essent apud Gildam Aulam prædictam coram præfatis Maiore et Ballivis dicto die Lunæ ad audiendum illam recognitionem secundum consuetudinem dictæ villæ Oxoniæ. Qui quidem Subballivus prædictus, eodem die Lunæ, retornavit quod prædicti Prior et alii in dicta billa superius nominati ut disseisitores nihil habent infra libertatem villæ Oxoniæ per quod possunt attachiari nec habent ballivos, &c.” [He returns the names of twenty-four jurors summoned to serve on the Assise.]

On the day given the Assise came. The record continues:—  
 “ Et unde idem Custos queritur quod disseisiverunt eum de  
 “ duobus mesuagiis et una acra terræ cum pertinentiis. Et  
 “ prædictus Prior venit et alii non veniunt, nec sunt attachiati,  
 “ sed quidam Robertus de Boxore respondet pro eis, tanquam  
 “ eorum ballivus, et dicit quod ipsi nihil clamant in prædictis  
 “ tenementis nec aliquam injuriam seu disseisinam eidem Cus-  
 “ todi inde fecerunt, et de hoc ponunt se super assisam. Et  
 “ prædictus Custos similiter.”

The Prior in his own person comes, and, as tenant of the tenements put in view, pleads in bar of the assise that the King was seized of the tenements in his demesne as of fee, and gave them to the Prior and Brethren to hold to them and their successors of the chief lords of the fee by the accustomed services, and that seisin was given to the Prior and Brethren by the Subescheator in pursuance of a writ; “et dicit quod super seisinâ eisdem Priori ut Fratribus liberata, ut præmittitur, prædictus Custos, clamando prædicta tenementa esse de feodo ipsius Custodis et teneri de eo, ut de jure Domus suæ prædictæ, per certa servitia, intravit prædicta tenementa, tanquam ei forisfacta juxta formam Statuti de terris et tenementis ad manum mortuam non ponendis nuper editi, prout idem Custos asseruit, [et] prædictus Prior ipsum Custodem ejecit de prædictis tenementis, sicut ei bene licuit, &c., et petit judicium si de illa seisinâ sic per ipsum Custodem habita, ut præmittitur, desicut ipsi Prior et Frater feoffati fuerunt per dominum Regem, ut prædictum est, assisa inde inter eos esse debeat, &c.

“Et prædictus Custos dicit quod, domino Rege in seisinâ de prædictis tenementis existente, ut est dictum, prædictus Prior prædictam terram, quæ de ipso Custode per certa servitia tenebatur, videlicet per fidelitatem et servitium duodecim denariorum per annum et sectam ad Curiam ipsius Custodis de Haliwell de tribus septimanis in tres septimanas, et in qua terra idem Custos separalem pasturam et alia proficua habere deberet a tempore collationis fructuum quousque iterato seminaretur, muro includere incepit, et diversas commissiones a dicto domino Rege certis amicis suis impetravit ad seisinam ipsius domini Regis tanto tempore continuandam ut idem Prior dictam terram includere posset, ut sic, colore seisinæ domini Regis prædictæ, dominium, et separalem pasturam, ac alia proficua ipsius Custodis de terra prædicta impediret et totaliter adnullaret, per quod idem Custos dicto domino Regi et ejus Concilio accessit, et, omnia præmissa demonstrando, supplicavit ut sibi super præmissis congruum remedium adhiberet, per quod idem dominus Rex breve suum mandavit ad inquirendum utrum prædicta tenementa tenerentur per prædicta servitia de prædicto

Custode ut de jure Domus suæ prædictæ, ac etiam si idem Custos separalem pasturam tempore prædicto et alia proficua in terra prædicta habere deberet necne, virtute cujus mandati tunc Ballivi villæ Oxoniæ prædictæ super præmissis inquisierunt, quæ quidem Inquisitio, coram eis, virtute mandati domini Regis prædicti, sic capta, in Cancellaria ejusdem domini Regis extitit retornata, per quam Inquisitionem compertum fuit quod prædicta mesuagia et terra tenentur de ipso Custode per prædicta servitia [as before]. . . . et quod idem Custos separalem pasturam et alia proficua a tempore collationis et asportationis frugum quousque iterato seminetur in eadem terra habere debet, super quo idem Custos per petitionem suam domino Regi et Concilio suo, in Parlamento convocato apud Westmonasterium, die Lunæ proxima post Festum Sancti Matthæi Apostoli, anno regni domini Regis nunc undecimo, supplicavit ut, habito respectu ad Inquisitionem prædictam in Cancellaria ipsius domini Regis retornatam super præmissis, remedium sibi provideretur opportunum, per quod idem dominus Rex per Concilium suum petitionem ipsius Custodis coram dicto domino Rege sic exhibitam indorsari fecit, et concessit eidem Custodi quod per hujusmodi commissiones suas ant seisinam suam de prædictis tenementis habitam noluit communi legi in aliquo præjudicari sed manum suam de prædictis tenementis penitus amoveri, ut idem Custos ea quæ defensionem et manutenentiam juris sui et Domus suæ prædictæ contingunt, quo ad prædicta mesuagia, terram, et alia proficua, facere valeat secundum consuetudinem et legem regni, &c., sine occasione vel impedimento domini Regis vel ministrorum suorum quorumcunque, seisina ipsius domini Regis de mesuagiis et terra prædictis habita in aliquo non obstante, unde idem Custos literas ipsius domini Regis patentes præmissa testificantes profert in hæc verba."

The Letters Patent are set out.—By them the King revokes a commission, and resolves to remove his hand from the tenements which were to have been added to the manse of the Prior—"ad elargitionem mansi sui."

The replication of the Custos or Warden is then continued to the effect that he thereupon entered and continued his seisin for 50 weeks, when the Prior and others ejected him. And he says the custom in the town of Oxford is that whoever has been seised of any tenement "pacifice per quadraginta septimanas, clamando illud esse liberum tenementum suum, quocunque titulo aut colore ad illud e venerit, quod si ipse ejectus fuerit de illo tenemento post prædictas quadraginta septimanas per quemcunque fuerit, nisi fuerit per judicium super breve domini Regis de assisa vel alterius brevis, quod ille sic ejectus recenter post illam ejectionem videlicet infra quadraginta

"septimanas a tempore ejectionis prædictæ habebit de illa  
 "ejectione recuperare suum per billam de frisca forcia, qua  
 "seisina per quadraginta septimanas obtenta et continuata  
 "cognita, seu per veredictum inventa, sic ejectus seisinam suam  
 "prædictam recuperabit," . . . . . and therefore the  
 "Custos petit iudicium, et seisinam terræ, ac assisam pro  
 "damnis, &c."

The Prior denies the custom.—"Et de hoc ponit se super  
 "juratam, loco assisæ, et prædictus Custos similiter. Ideo ca-  
 "piatur inde jurata, loco assisæ. Juratores ex assensu partium  
 "electi dicunt," that the custom was as alleged above. They  
 also find the facts as alleged by the plaintiff, and the disseisin  
 with force and arms.

Judgment for the Custos or Warden to recover seisin against Judgment.  
 the Prior. Damages 10*l*. The disseisors to be taken.

Then follow the proceedings in Error in the Court of King's  
 Bench.

The Prior appears as plaintiff in Error, and says "quod in Proceedings  
in Error.  
 "recordo et processu prædictis, per prædictos Maiorem et  
 "Ballivos perlati, aliquid irrotulatur de quo coram præfatis  
 "Maiores et Ballivis nihil extitit placitatum neque locutum,  
 "et aliquid in eodem non irrotulatur quod coram eis extitit  
 "placitatum. . . . . Et hoc paratus est verificare  
 "sicut Curia hic consideraverit quod verificare debuerat."

The Mayor and Bailiffs of Oxford say "quod non fuit aliquod  
 "aliud recordum coram eis quam illud quod hic mittitur."  
 They are ready to verify in like manner.

Upon this there was an adjournment "quia Curia non avisa-  
 "batur."

Then "Mandatum fuit præfatis Maiores et Ballivis prædictæ  
 "villæ Oxoniæ quod plenum recordum inde mitterent."

The Mayor and Bailiffs returned "quod recordum et processum  
 "loquelæ prædictæ cum omnibus et singulis secundum formam  
 "quibus coram eis fuit placitatum alias coram Rege miserunt  
 "adeo plene sicut coram eis deducta fuit, ita quod penes ipsos  
 "nihil inde remansit, per quod nihil aliud de novo coram Rege  
 "transmittere potuerunt."

Then follows a writ to the Sheriff of Oxford to cause the  
 Mayor and Bailiffs to come "ad manutenendum returnum  
 "suum prædictum."

Process was continued until the Quinzaine of Easter, 15 Ed-  
 ward III.

On the day given the Mayor and Bailiffs appear, and say again  
 as above.

The Prior does not appear, and the Mayor and Bailiffs go  
 without day.

Afterwards the Prior comes, and asserts that errors had intervened in the record and process, and prays and has *Sci. fa.* directed against "Magister" Robert de Trengre to hear "re-cordum et processum prædicta" . . . "a die Sanctæ Trinitatis in xv. dies."

"Quo die prædictus Prior non prosequitur, &c.

"Ideo nihil inde ad præsens."

"Postea ad sectam nunc Prioris Domus Fratrum Ordinis "Sancti Augustini in suburbio Oxoniæ, &c.," the successor of John de Saltford, asserting errors, &c., a new *Sci. fa.* to hear, &c., issues, directed against the Custos or Warden.

Then comes the objection of the Custos or Warden as to variance, the new Prior being named successor in the *Sci. fa.*, and not in the warrant of attorney. This was not allowed, and "dictum est Custodi quod respondeat ulterius, &c."

The Custos or Warden then objected that the record and process were not sent by sufficient warrant, because it was supposed in the writ by virtue of which they were sent that one of the *Confratres* of the late Prior was Thomas de Abingdon, and in the record sent that he was Nicholas de Abingdon.

There follows the King's writ to the Justices to proceed, the variance notwithstanding.

Then comes the assignment of Errors by the Prior.

In this place the roll is somewhat defaced, but the principal errors assigned are stated in the affirmance of judgment below, and it would, in any case, be needless to print them more than once.

There were, however, various delays before judgment. An exception was taken by the defendant in Error to the *Sci. fa.* to hear, &c., because in it the *Assisa Friscæ Forcie* was described as *Assisa Novæ Disseisinæ*. This had to be allowed, and a new and correct *Sci. fa.* issued. There were also writs to proceed, which are enrolled. At last, after adjournments extending to the Octaves of St. Michael, 15 Edward III., the affirmance of judgment was delivered as follows:—

Affirmance  
of Judgment.

"Et quia, visis recordo et processu prædictis, quo ad hoc quod prædictus Prior assignavit pro errore quod prædictus Custos se questus fuit disseisiri versus quendam Walterum de Shelestone et alios, &c., et in recordo et processu immediate supponitur quod quidam Willelmus de Shelestone et alii<sup>1</sup> disseisivisse debuissent ipsum Custodem, et sic faciendo omissionem de ipso Waltero, et admiserunt placitum pro ipso Willelmo, de quo warantum non habuerunt, et super eodem placito assisam ceperunt, et iudicium pro ipso Magistro reddiderunt, ex quo processus versus ipsum Walterum fuit discontinuatus :

<sup>1</sup> The Roll, *alii*.

“Et quo ad hoc quod idem Prior assignavit pro errore quod ipse in ipso placitando allegavit prædicta tenementa fore in manum domini Regis et eidem Priori et successoribus suis per chartam Regis fuisse data, quam possessionem, &c., idem Magister expresse cognovit, et in hoc quod fecit sibi titulum pro assisa habenda pro eo quod ante seisinam Regis tenementa prædicta tenebantur de prædicto Magistro et per donum Regis mortificata, super quo ipse Magister intravit, et sic per cognitionem suam propriam supposuit omnimodam prosecutionem per billam de frisca forcia, prætextu consuetudinis prædictæ, fuisse adnullatam, eo quod tenementa fuerunt in manum domini Regis, et de eo quod ipsi tenuerunt placitum de eisdem tenementis, ex quo ipse Magister cognovit prædictum Priorem habere tenementa de domino Rege, et processerunt ad captionem assisæ prædictæ, domino Rege inconsulto, &c. :

“Et quo ad hoc [quod] idem Magister recognovit eadem tenementa fuisse in manum domini Regis, et ea præfato Priori esse data, et sic omnimodum dominium alterius quam Regis ante seisinam Regis habitum fore extinctum, et idem Custos pro assisa habenda ostendit qualiter ipse ratione perquisitionis et mortificationis tenementorum prædictorum ingressus fuerat, et in tantum cognoscendo ingressum prædictum et sic quandam disseisinam ipsi Priori, prout prædictus Prior superius placitaverat versus ipsum Magistrum in exclusionem assisæ, &c. :

“Et quo ad hoc quod ipse Magister sumpsit pro titulo consuetudinem dictæ villæ a toto tempore usitatam, scilicet quod ipse qui se possit affirmare esse seisitum de aliquo libero tenemento per quadraginta septimanas sine perturbatione alioquin, et de illo tenemento fuerit ejectus post prædictas quadraginta septimanas, habebit suum recuperare per billam de frisca forcia, &c., et sic fecit sibi titulum de seisina ipsius Magistri incepta et continuata post disseisinam factam præfato Priori, &c. :

“Et quo ad hoc quod nomina juratorum non mittuntur per recordum hic missum :

“Et ex istis causis et aliis in recordo et processu per ipsum Priorem in Curia hic prolati errasse debuissent, &c. :

“Habito inde diligenter tractatu, avisiamento, et examinatione, cum aliis discretis et legum Angliæ peritis, Videtur Curis quod præfati Maior et Ballivi in recordo et processu prædictis, nec in captionem assisæ prædictæ, nec in iudicio illo super veredicto illo capto reddendo, in nullo erraverunt, immo rite et legitimo modo processerunt, et iudicium illud rite pro ipso Custode reddiderunt ; per quod consideratum est quod iudicium illud tanquam bonum et rito modo redditum affirmetur, et quod idem Custos habeat executionem de damnis, et quod

prædicti Prior et omnes alii disseisitores, pro disseisina vi et armis facta, capiantur ad satisfaciendum domino Regi, &c." . . . . .

"Postea, scilicet termino Paschæ anno regni Regis nunc vicesimo secundo, coram domino Rege [venit ?] prædictus Prior in propria persona sua, et solvit prædictas decem libras hic in Curia, quæ<sup>1</sup> remanent in custodia Johannis de Ludyngtone, Capitalis Clerici, &c., et petit admitti ad faciendum finem tam pro se ipso quam pro prædictis Confratribus suis, &c., et admittitur, prout patet per Rotulos Finium de Termino Paschæ prædicto, anno prædicto vicesimo secundo, &c. Postea, scilicet die Martis proximo post mensem Paschæ termino eodem, prædictus Johannes de Ludyngtone solvit prædicto Custodi prædictas decem libras. Ideo idem Johannes inde exoneretur, &c."

## APPENDIX B.

### RECORD OF CASE NO. 6 OF TRINITY TERM, 15 EDWARD III.<sup>2</sup>

Præceptum fuit Vicecomitibus, cum ex parte Ricardi le Mulewarde de Magna Merlawe domino Regi extitit monstratum quod cum ipse nuper recognovisset se debere Hamoni le Barber, Civi et Bladario Londoniarum, viginti libras secundum formam Statuti dudum apud Actone Burnel pro mercatoribus editi certis terminis in eadem recognitione contentis solvendas, et licet idem Ricardus prædictas viginti libras præfato Hamoni solverit, sicut per scriptum acquietantiæ ejusdem Hamonis eidem Ricardo inde confectum plenius poterit apparere, prædictus tamen Hamo quoddam breve Regis de capiendo corpus prædicti Ricardi juxta formam Statuti prædicti coram Justiciariis hic post summonitionem Itineris Justiciariorum Regis nuper apud Turrim Regis Londoniarum Itinerantium returnatum et per præfatos Justiciarios Regis in Itinere prædicto de mandato Regis missum impetravit, quo prætextu idem Ricardus per processum coram Justiciariis Regis Itinerantibus inde factum captus est et prisonæ Regis de Nengate mancipatus,

<sup>1</sup> The Roll, qui.

<sup>2</sup> *Placita de Banco*, Trin., 15 Edw. III., R<sup>o</sup>. 40.

sicut per returnum brevium Regis coram præfatis Justiciariis Regis in Itinere prædicto returnatorum, quæ coram præfatis Justiciariis hic habentur, plenius poterit apparere, in ipsius Ricardi damnum non modicum et gravamen et vitæ suæ periculum manifestum, ac contra tenorem scripti prædicti, per quod ex parte ipsius Ricardi in Cancellaria Regis domino Regi extitit supplicatum ut sibi in hac parte de remedio provideri faceret, et dominus Rex, nolens ipsum Ricardum in hac parte prægravari, mandaverit præfatis Justiciariis Itinerantibus quod, vocatis coram eis partibus prædictis, auditisque hinc inde eorum rationibus, ulterius in præmissis fieri facerent quod de jure et secundum legem et consuetudinem regni Angliæ fuerit faciendum, et postmodum, pro eo quod sessio prædictorum Justiciariorum Regis Itinerantium discontinuata extitit, mandaverit dominus Rex dilecto et fideli suo Roberto Parnyng, Capitali Justiciario suo in Itinere prædicto, quod recordum et processum totius negotii prædicti, sub sigillo suo, et dilecto clerico suo Adæ de Stayngrave, Custodi Brevium Regis in Itinere prædicto, quod omnia brevia negotium prædictum tangentia tunc sub custodia sua existentia, sub sigillo suo, Justiciariis hic sine dilatione mitterent, ut iidem Justiciarii hic partibus prædictis in negotio prædicto justitiam facerent, præfatusque Robertus recordum et processum prædicta et præfatus Adam brevia prædicta hic miserunt, juxta tenorem brevium Regis eis inde directorum, per quod Justiciariis hic mandaverit dominus Rex quod, visis recordo et processu negotii prædicti et brevibus prædictis neonon scripto acquietantiæ prædicto, et vocatis coram eis partibus prædictis, auditisque hinc inde earum rationibus, ulterius in præmissis fieri facerent quod de jure et secundum legem et consuetudinem prædictas fuerit faciendum, quod venire facerent hic ad hunc diem, scilicet in Octabis Sanctæ Trinitatis, præfatum Hamonem super præmissis respondurum et ulterius facturum et recepturum quod Curia, &c., et etiam quod haberent hic prædictum Ricardum ad faciendum et recipiendum quod Curia, &c.

Et modo venit tam prædictus Ricardus in custodia prædictorum Vicecomitum quam prædictus Hamo in propria persona, &c.

Et Hamo dicit quod prædictus Ricardus, die Sabbati proxima post Festum Sancti Jacobi Apostoli anno regni Regis nunc undecimo, coram Johanne de Pulteneye, nuper Maiore Civitatis Regis Londoniarum, et Wilhelmo de Carletono clerico ad recognitiones debitorum apud Londoniam accipendas deputato, recognovit se debere præfato Hamoni prædictas viginti libras, quas ei solvisse debuit ad Festum Sancti Michaelis tunc proxime sequens, et eas ei nondum, &c.,



prout in recordo per prædictum Robertum Parnyng de mandato domini Regis Justiciariis hic misso continetur, prout patet termino Paschæ ultimo, R. cccvj. Et petit quod prædictus Ricardus moretur in custodia, &c., juxta formam Statuti, &c., donec ipsi Hamoni de prædicto debito fuerit satisfactum, &c.

Et Ricardus dicit quod prædictus Hamo injuste aecutus est versus eum executionem debiti prædicti, virtute recognitionis prædictæ, quia dicit quod idem Hamo, sexto die Martii anno regni Regis nunc tertiodecimo, in Warda de Langeburne in parochia Sancti Edmundi Regis Londoniarum, per scriptum suum perdonavit, relaxavit, et omnino quietumclamavit ipsi Ricardo omnimodas actiones, querelas, et demandas, quas habuit, vel aliquo modo habere potuit, per viam compoti, debiti, aut alicujus alterius contractus, ab origine mundi usque diem confectionis prædicti scripti. Et profert hic prædictum scriptum, sub nomine prædicti Hamonis, quod hoc testatur, &c. Et petit judicium si prædictus Hamo contra factum suum prædictum executionem inde versus eum habere debeat, &c.

Et Hamo dicit quod ipse per scriptum prædictum ab executione in hac parte præcludi non debet, &c., quia dicit quod, prædicto die confectionis prædicti scripti, prædictus Ricardus, et quidam Johannes de Molyne, simul cum aliis ignotis, in Warda Castri Baynardi, vi et armis ceperunt ipsum Hamonem, et eum duxerunt usque domum ejusdem Johannis in eadem Warda, et ipsum Hamonem ibidem contra voluntatem suam detinuerunt quousque ipse Hamo, per vim et coercionem, atque metu mortis, fecit prædicto Ricardo prædictum scriptum. Et hoc paratus est verificare, &c., unde petit judicium, &c.

Et Ricardus dicit quod tempore confectionis prædicti scripti prædictus Hamo fuit sui juris, et non ibidem detentus contra voluntatem suam, sicut idem Hamo superius asserit. Et de hoc ponit se super patriam, et Hamo similiter. Ideo præceptum est Vicecomitibus quod venire faciant hic a die Sancti Johannis Baptistæ in xv. dies xij., &c., per quos, &c., et qui nec, &c., ad recognoscendum, &c., quia tam, &c. Et prædictus Ricardus interim committitur Gaolæ de Flete, &c. Et super hoc prædictus Hamo ponit loco suo Henricum Wykewan, &c. Ad quem diem venerunt partes prædictæ, et Jurata inde posita fuit in respectum hic usque ad hunc diem, scilicet a die Sancti Michaelis in xv. dies, nisi R. Hillary et B. de Keleshulle vel unus eorum die Sabbati proxima ante Festum Sanctæ Margarete Virginis apud Sanctum Martinum Magnum Londoniarum prius venissent vel venisset, &c.

Et modo veniunt partes prædictæ, et prædictus Rogerus coram quo, &c., misit hic recordum Juratæ prædictæ in hæc verba:—Postea ad diem et locum infra contentos coram præ-

fato R. Hillary, associato sibi Adam Lucas, venit tam prædictus Ricardus Mulwarde ductus in custodia, &c., quam præfatus Hamo in propria persona, &c., et similiter Juratores venerunt, qui, ex assensu partium electi, et jurati, dicunt super sacramentum suum quod prædicto die confectionis prædicti scripti prædictus Ricardus, et quidam Johannes de Molyns, simul cum aliis ignotis, in Warda Castri Baynardi, vi et armis ceperunt ipsum Hamonem, et eum duxerunt ad domum cujusdam Johannis in eadem Warda, et ipsum Hamonem ibidem contra voluntatem ipsius Hamonis detinnerunt, quousque ipse Hamo, per vim et coercionem, atque metu mortis, fecit prædicto Ricardo scriptum prædictum. Ideo idem Hamo habeat executionem recognitionis prædictæ super primo processu inde habito, et habeat breve per Statutum, &c. Et qualiter, &c., scire faciant hic a die Sancti Hillarii in xv. dies, &c. Et sciendum quod prædictus Ricardus remanet in Gaola de Flete, &c. Postea prædictus Hamo venit in Curia hic, scilicet die Sabbati proxima post quindenam Sanctæ Trinitatis anno ejusdem Regis decimo octavo, et cognovit quod prædictus Ricardus satisfecit ei plenarie de debito prædicto. Ideo idem Ricardus inde quietus, et deliberatus a gaola prædicta, &c.

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( 487 )

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INDEX OF MATTERS.

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## INDEX OF MATTERS.

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### A

#### ABATEMENT OF WRITS :

If there be, in a real action, a plea of joint-tenancy by fine, the demandant cannot maintain his writ, but it abates, 4.

If a writ be false, according to the finding by verdict, the Court should abate it, even though the party may not have taken exception to it, 210.

If a writ contain an impossible name, and view be had, it will be held that the writ has been accepted as good, and the Court will not abate it by office, 454.

(Account.) If writ of Account be brought against one who has had execution on a Statute Merchant, and it be therein supposed that the defendant has received a part of the debt, and that the plaintiff is ready to pay the residue, the writ is good, although according to the Statute Merchant the creditor and his assigns are to hold the lands until the debt and damages be levied from the issues, 76-78.

(Assise of Darrein Presentment.) If a writ be purchased by husband and wife within six months after the vacancy, and the husband die pending the plea, and the wife, without delay, purchase a new writ, the latter writ is good, though the church may have been full six months or more before its purchase, 140-141, note, 144, 146.

#### ABATEMENT OF WRITS—*cont.*

(Debt.) If a parson of a church against whom the writ is brought as such parson exchange his benefice, it is a good exception to the writ that he was not parson of the church on the day on which the writ was purchased, and issue shall be joined thereon, 816.

(Formedon in the Descender.) The tenant, an Abbot, was not described in the writ as parson of a church, and he alleged that he held the tenements in frankalmoign as free alms of that church. This was denied. The Abbot alleged a fine in support of his contention, and prayed judgment whether the demandant could be admitted to deny the tenure. The demandant afterwards failed to appear. *Semble* that the writ abated, 380-386.

(Formedon in the Reverter.) If the donor, who was great-great-grandfather, be described as *consanguineus*, and not as *abavus*, the writ is good, as all ancestors more remote than the great-grandfather are rightly called *consanguinei*, 372.

(*Præcipe quod reddat scriptum obligatorium de debito.*) The writ is held good though the count be as upon a deed of annuity, 166.

(*Quare impedit.*) If it be alleged that the church is in Wales, where the King's writ does not run, the writ is nevertheless good when the King (but *semble* only when the King) is a party, 148, 152.

ABATEMENT OF WRITS—*cont.*

A writ brought by the King against parson imparsonce is good, 148, 149, note.

If the King bring a writ against a bishop in the form "by reason of" the Bishopric (not the temporalities) having been lately vacant "and in the King's hand," it is good, 896.

A writ in respect of a prebend brought in a county in which the church is, but the *corpus* of the prebend is not, abates, 396-400.

(Right of Advowson.) If the writ be brought against a Prior, as Prior, and not by his baptismal name, and he be deposed, the writ is good as against his successor, 96-98, 172-176.

## ACCESSORY :

If one be indicted as accessory before the fact in a case of homicide, and it be found by the roll that the principal killed *se defendendo*, the principal has been acquitted of felony, and the person indicted cannot be arraigned as accessory, 262.

## ACCOUNT :

Writ of, 10, 74, 176, 188, 260, 446.

If, on the return of the *Capias*, in action of Account against A. and B., A come in custody, and B. do not come, A. must remain in custody until B. comes, because he cannot account by parcels, 54.

The plaintiff alleged that he made a Statute Merchant to the defendant, who had had execution and caused the plaintiff's manor to be extended below its value, and had had satisfaction and given acquittance for part of the debt, and the plaintiff had the residue ready in Court. The defendant's assignee was named in the writ with the defendant, but did not appear, and the defendant was compelled to answer as to his deed of acquittance, 74-78.

ACCOUNT—*cont.*

If defendant in Account plead that he was the plaintiff's steward and surveyor, and that others were his receivers, it is a denial that he was receiver, and issue will be taken on the traverse, 188.

Mainprise for defendant, 260-262, 294-296.

*See* ABATEMENT OF WRITS ; ATTORNEY ; OUTLAWRY.

## ADMISSION :

Of wife to defend. *See* RECEIPT.

## ADVOWSON :

Demand of dower of an advowson, 485, note 2.

*See* PARCENERS ; RIGHT OF ADVOWSON.

## AGE :

Prayer of age in *Scire facias* refused, 236-242.

## AID :

In Replevin, the bailiff of husband and wife, when he has made cognisance in respect of matters claimed as in right of the wife, has aid of the husband and wife, 54-56, 55, note 2.

On writ of Entry *sur disseisin*, where it is alleged that A. has leased to B. for life, with remainder to C. in fee, and C. has granted the reversion, expectant on B's death, to D. for life, and has subsequently granted the reversion expectant on the death of B. and D. to E. in fee, B. prays aid of both D. and E., 84. *See also* 166.

If there be joinder in aid on a writ of Entry *de rationabilibus divisis*, the demandant counts against both the tenant and the prayee in aid, 188-190, 278.

Prayer of aid in *Scire facias* refused, 236-242.

Plaintiff in Replevin has aid of his wife, and is told to produce her, 256, 257-259, note.

**AID—cont.**

Plaintiff in Replevin has aid of his wife, and summons issues against her, 301, note 3.

In Replevin, where the avowry was for rentcharge, the tenant for life of a fourth part of the manor charged had aid of the reversioner without pleading to issue, 376-380.

In *Scire facias* to have execution of a fine, 456-458.

**AID OF THE KING :**

If tenant have prayed aid of the King, and had it, and a writ to proceed have issued, and the tenant vouch and show that the ancestor of the vouchers rendered the tenements to the King to the use of the tenant's ancestor whom the King enfeoffed, he shall have the voucher, 78-80.

Tenant in Formedon in the Descender prayed aid of the King, who, as he alleged, had enfeoffed his ancestor, but as that ancestor's daughter had enfeoffed the alleged donor, it was held that the tenant's estate was therefore not by the King's charter, and that aid of the King could not be allowed, 190-196.

**ANCIENT DEMESNE :**

To an allegation (as a plea to the jurisdiction in Formedon in the Descender) that certain tenements were Ancient Demesne, it was replied that King John had by charter given them in fee to the demandant's ancestor, and that they had thus become frank fee. Issue was joined as to whether they were Ancient Demesne or frank fee, 190-196.

*See VENUE.*

**ANNUITY :**

Writ of, and proceedings thereon, 82, 83, note.

*Scire facias* against a parson for arrears of an annuity recovered against his predecessor, 276.

**APPEAL :**

A woman commenced an appeal before the expiration of the year and day, and was, as she alleged, taken and imprisoned on the pretended suit of one who had no existence in *rerum natura*, and was nonsuited while in prison. She then purchased another writ of Appeal in the King's Bench after the expiration of the year and day, but it was said that her remedy, if any, was by writ of Error, and she was nonsuited, 152-154.

If the appellee have not prayed to have damages, and the appellor be nonsuited, the appellor may make a fine in lieu of imprisonment, 296.

If an appellee acknowledge an appeal to be good, and desire to appeal others, this establishes the appellor's case, and the appellee is hanged, 310.

**APPEARANCE :**

If a creditor has had execution on a Statute Merchant and has assigned a portion of the land, and a *Venire facias* issues for him to answer as to an acquittance and other matters, and he wishes to absent himself, but is in custody on another action and is brought to the bar, he must answer, 164-166.

If in Trespass the Sheriff return *Now est inventus*, but the defendant be in Court, it is a good appearance, if the plaintiff also appear, 250.

**ARCHES :**

The Court of, in London, 266.

**ASSISE :**

*See CHALLENGE ; COMMON OF PASTURE ; DARRIN PRESENTMENT ; NOVEL DISSEISIN.*

**ATTACHMENT ON PROHIBITION :**

If the King has had judgment, and any thing has been attempted against it, the person of the defendant shall be attached, 266.



**ATTACHMENT ON PROHIBITION—*cont.***

Though appeal may have been prosecuted in the Court of Arches in London, the writ of Attachment may nevertheless be rightly directed to the Sheriff of another county, if the provocations have commenced there, 266.

**ATTAIN:**

Continuance on writ of, 232.

**ATTORNEY:**

In action of Account, 76.

*Quere* as to appearance of wife praying to be admitted, on default of her husband, by attorney made by writ in Chancery, 129.

If there be a general warrant of attorney to A. "in all pleas," to last for a certain time, and the time expire pending a plea, A. nevertheless continues attorney throughout the plea unless expressly removed, 140-142.

By bill, and otherwise, 254.

*See* ESSOIN.

**ATTORNMENT:**

A. by fine granted to B. for B.'s life, after his death to C. should C. survive B., the reversion after the death of both B. and C. being to the grantor for his life, and the remainder to D. in fee. D. purchased the reversion, and the first tenant for life only attorned, 368.

In action of Waste brought by grantee of reversion against tenant in dower, the issue was that no waste had been committed since attornment, 426-428.

*See* QUID JURIS CLAMAT.

**AUDITA QUERELA:**

If A., B., and others sue *Audita Querela* in consequence of execution wrongfully sued on a Statute Merchant in which they were all bound, and if, after the issue of the *Venire* against the recognissee, A.

**AUDITA QUERELA—*cont.***

alone proffer himself, and the others do not sue, there will, as to A., be no nonsuit, 46-50.

A., however, being a prisoner, cannot have a writ of *Nisi prius* in his favour after issue has been joined, and cannot be let out on mainprise by the Court of Common Pleas, 50-52.

If a creditor allege that his release or acquittance was obtained under duress, and this be denied and issue be joined, the jury shall come from the neighbourhood in which the imprisonment is alleged, 178-180.

The deed of release or acquittance need not be produced to the jury if it be not denied, 180.

The debtor is not allowed out on mainprise by the Court of Common Pleas, though he may be by the Justices in Eyre, 180.

Process in, 254.

A plaintiff in *Audita Querela* alleged that his recognisance had been delivered up to him in lieu of acquittance, and that execution had been obtained against him on another recognisance which had been counterfeited. The defendant traversed the alleged delivery of the recognisance, and issue was joined thereon, 310-314.

Record of, in full, 482-485.

*See* VARIANCE.

AVOWRY. *See* REFLEVIN.

**B****BARON AND FEME:**

A wife, being admitted on default of her husband, vouches, and is warranted, but, pending the plea, the warrantor dies. A resummons issues against the wife alone, as the husband has already lost by default, 178.

**BARON AND FEME—cont.**

A plaintiff in Replevin has aid of his wife, and is told to produce her, 256, 257-259, note.

A plaintiff in Replevin has aid of his wife, and is not told to produce her, but a summons issues against her, 300, 301, note 3.

*See RECEIPT.*

**BISHOP :**

Creation of, at the Court of Rome, 162.

**C**

**CASES CITED :**

Botiller's case, 44.

John Benstede's case, 160.

The Abbot of Ramsey's case, 260.

The Abbot of Colchester's case, 350.

The Prior of Barnwell's case, 352.

Kymberley's case, 358.

Gervase de Bray's case, 386.

**CESSAVIT :**

Where it is alleged that the tenancy is by several services, some divine, and some otherwise, the action must be by one writ and not by two, 448-450.

It is a good plea to disclaim in the freehold in general terms, 450.

**CHALLENGE :**

Of array, in Assise of Novel Disseisin, 4.

**CHAPTER :**

Acts for Dean and Chapter during absence of the Dean abroad, 270-274.

**CLERGY, BENEFIT OF.** *See OUTLAWRY.*

**COGNISANCE OF PLEAS :**

Cognisance was claimed in *Quare impedit*, but counsel did not abide judgment, and pleaded over, 40, 42.

**COMMON BENCH.** *See KING, THE.*

**COMMON OF PASTURE :**

If tenements have at one time been ancient tenements, to which common was appendant, and if subsequently they and the land in which there was common are in the seisin of one and the same person, and if that person enfeoff A. of those tenements, and B. of the land in which the common was, and A. be disseised of the common by those who have B.'s estate, an action of Novel Disseisin of Common will lie, 12-16.

If one hold land at will, he cannot claim common as appendant or appurtenant thereto, 14-16.

If the plaint in Assise of Novel Disseisin be for common in gross the title must be shown, 182.

If the title be a deed conveying a messuage with a croft and with common in moor, &c., and the croft be ancient arable land, the common is not in gross but appendant (or according to the roll *pertinens*), 182-184.

On a grant of common the grantee can himself take seisin, 186.

**CONTEMPT :**

Writ of Contempt against an Abbot for non-admission of the King's nominees to a corody, 62-66.

On a writ of Contempt, the service of the writ *de corodio habendo* was traversed, and issue was joined thereon, 68.

Writ of Contempt against a Prior for non-admission to a corody, and pleadings thereon. Question whether he was a *Prior perpetuus*, or a *Prior dativus* removable at the will of an alien Abbot. Bishop's certificate showing that he was the latter, and judgment for the Prior, 302-306.

Writ of Contempt was brought in the Common Bench against a Prior

**CONTEMPT—cont.**

who had neglected to appear to a writ *de corodio habendo* in the King's Bench, and was held good because the King can take his suit where he pleases, 346-348.

**CORODY :**

A. having been admitted to corody in an Abbey, to receive such sustenance as B. (one previously admitted) had had, suggested in Chancery that he had not had his sustenance so fully as B. After an Inquest of Office as to the fact, a writ of Contempt issued against the Abbot to show cause why he had not admitted B. The Abbot pleaded that no one had been admitted to a corody in his house by command, but only at the request of Kings, and that B.'s sustenance was not so much as found by the Inquest of Office. Issue was joined, and the jury charged on three points,—whether admissions had previously been by command, whether persons previously admitted had had sustenance to the extent found by the Inquest of Office, and whether as much had been withheld from A. as he alleged, 64-66.

On a writ of Contempt for non-admission to a corody, an Abbot traversed in effect both the King's right and the King's possession, and though by pleading as to the right alone he might admit the possession, he was, nevertheless, compelled to hold to one, 66-68.

Writ of Contempt against a Prior for non-admission of the King's nominee to a corody. The Prior was "dativus et amotivus" at the will of an alien Abbot, and judgment was given in his favour, 302-306.

Pleadings on a writ of Contempt, 346-353.

**CONOVERS :**

Jury process not to be directed to, unless some default be found in Sheriff, 163.

**COSINAGE.** See **ESTOPPEL**.

**COUNCIL :**

The King directs a petition presented to the King and his Council in Parliament to be endorsed by the Council, 478.

**COUSIN :**

What ancestors may rightly be described as *consanguinei*, 373.

**CROWN, PLEAS OF THE :**

Homicide in self-defence, 262.

Brawl and homicide in Westminster Hall, 270-274.

Appeal, 296, 310.

**CUI IN VITA AND SUR CUI IN VITA :**

When brought by the heir, if it be pleaded that the wife had only an estate for life by purchase, issue is joined upon the traverse of title, 4.

**D****DARREIN PRESENTMENT :**

Pleadings in assise of, 6-10, 138-146, 400-412.

Writ of, lies against disturbers, and plea of joint-tenancy does not lie, 142, 146.

See **ABATEMENT OF WRITS**.

**DAY OF GRACE :**

Granted on prayer of plaintiff only, and not of defendant, 54.

**DEAN.** See **CHAPTER**.

**DEBT :**

In Debt on an obligation conditioned for the ratification by the defendant of whatever should be done by his proctors in a Consistory Court, he pleaded that he did ratify. The plaintiff was compelled to state in what particular ratification was wanting, and issue was joined thereupon, 132.

**DEBT—cont.**

Process in Debt, where the defendant, parson of a church, had effected an exchange of benefice, 308–310, 316.

Issue as to whether the defendant was parson of a particular church on the day of the purchase of the writ, 316.

Debt brought by one retained by a party to a writ of Entry at the rate of one mark by the year and four marks for the serjeants, 344–346.

Debt on an obligation conditioned for procuring a release from an executor, 352.

See EXECUTORS.

**DECEIT:**

On the death of one who brought a writ of Deceit in respect of land lost by default, it was held that a writ of Deceit lay for his heir, 424.

**DEFAULT:**

Wager of law to save default by a supposed lunatic, 248.

**DEGREES:**

In writs of Entry, 454.

**DETINUE. See DISCONTINUANCE; PLEADING.**

**DEVISE:**

Gift by Devise and writ of Formedon thereon, 372–376, 377, note 2.

**DICENERS:**

Suitors to a “Teinure” or decennary or tithing court, 104–106.

**DISCONTINUANCE:**

If there be several defendants, and one appear, and the others, after making a default, have a day by the Grand Distress, and there be no mention of *Idem dies* on the roll with regard to the one who appeared, it is a discontinuance as to all, 86–88.

An adjournment from the fourth day of the Quinzaine of Trinity to the Quinzaine of Trinity is a good

**DISCONTINUANCE—cont.**

continuance to the Quinzaine of Trinity in the following year, 232.

Discontinuance of Process in Detinue, 308.

**DISTRESS:**

If a lord distrain his tenant, when no services are in arrear, though the distress be levied within the lord’s fee, a writ of Trespass lies for the tenant, *per* Sharshulle, J., 122.

If a distress be levied and detained for rent which has become extinct, a writ of Trespass lies, 306–308.

**DOWER:**

Action of, 36–38, 44, 128, 160, 428–434.

A widow is dowerable when nine years of age, 160.

If the husband have been outlawed for felony, and pardoned, and have been seised since the pardon, the wife shall have dower, 330.

The demandant has not to show her husband’s title, 330.

Voucher of two sons as heirs, 330–332.

*Dower de la plus belle*, 336.

The tenant alleged that the demandant’s husband had not entry but by disseisin, and she alleged a release to her husband by the supposed disseisee, which was admitted by the tenant, but was alleged by him to have been obtained by duress of imprisonment. Issue was joined as to the duress, 354–356.

A demand for the third part of the profit of a fair and of a market, and not for the third part of the fair and market, was held good, 358–360.

Where rent was in demand, the husband’s heir was vouched as to part, and Never seised was pleaded as to the rest, 360.

Warranty, and form of judgment, in Dower, 434–438.

**DOWER—cont.**

Demand of Dower of an advowson,  
435, note 2.

See **VOUCHER**; **WARRANTY**.

**DUM FUIT INFRA ETATEM.** See **ENTRY**;  
**PLEADING**.

**DURESS.** See **DOWER**; **TRESPASS**.

**E****ELEGIT:**

If A. have execution on a recognisance by *Elegit*, and the debtor, on suggestion that he had previously made satisfaction for the debt, have *Scire facias* against A., and the Sheriff return that A. has nothing, but that B. is tenant by A.'s lease, there shall not be an *alias* writ to warn A. in the tene-ments leased, and the first writ of *Sci: fa:* ought not to have issued before the expiration of the term, 52-54.

*Scire facias* in the King's Bench to have re-extent, after execution by *Elegit*, 242-246.

*Venire facias ad compotandum* in the Common Pleas, after execution by *Elegit*, 243, note 1.

Execution by *Elegit* for damages on affirmation of judgment in Mesne, 370.

*Elegit* denied to a person in religion, 426.

**ENTRY.** See **PLEADING**; **VIEW**.

**ENTRY AD TERMINUM QUI PRÆTERIIT:**

The demand was for rent, and the tenant pleaded, as tenant of the soil, *Hors de son fee*. The demandant showed his title, and claimed the rent as rent seck, 134-138.

**ENTRY, DUM FUIT INFRA ETATEM:**

Writ of, 278-280, 452-454.

A. (while under age) and B. purchase land to hold to them and their heirs, and lease to C. for C.'s life. B. dies, and A. brings *Dum fuit*

**ENTRY, DUM FUIT INFRA ETATEM—cont.**

*infra etatem* against C. It was pleaded as to a moiety that A. ought not to have an action on the joint demise, and as to the other moiety that A. was of age at the time of the demise. Issue was joined on the latter point. As to the other *Quære*, 362-366.

See **PLEADING**.

**ENTRY IN THE PER AND CUI:**

Writ of, 255-6, note.

**ENTRY IN THE POST:**

Writ of, 250, 454, 458.

**ENTRY:**

Writ of, in the form "*sine assensu Archiepiscopi Eboracensis et Decani et Capituli, &c.*," 456.

**ENTRY SUR CUI IN VITA.** See **CUI IN VITA**; **SUR CUI IN VITA**.

**ENTRY SUR DISSEISIN:**

Writ of, 388, 440.

Aid in, 84.

**ERROR:**

Error in the King's Bench on Assise of Fresh Force, 56-60, 332, 475-482.

Record of proceedings in Error on Assise of Fresh Force, 475-482.

Affirmance of judgment in the Court of King's Bench after advice and examination with other persons discrete and learned in the laws of England, 481.

Where writ of Error lies, and where writ of False Judgment, 58.

If judgment be given in Assise of Novel Disseisin against the "*gardein*" or "*custos*" of a chapel, a writ of Error lies for his successor, 202-210, 214.

If in Assise of Novel Disseisin in respect of a chapel, the plaintiff in the original writ of Assise be not described as parson, guardian, or *custos*, and be so described in a subsequent writ *de procedendo*, it is the duty of the Justices to quash

**ERROR—cont.**

the writ of Assise, and if on the contrary they proceed, they do so without warrant and in error, 202-214, 211-213, note.

In Error brought on judgment on *Scire facias* to have execution on judgment in Mesne, the assignment of errors was that (1) no express judgment as to acquittal of services was given on the original writ of Mesne, but only a writ to the Sheriff to distrain the defendant to acquit; (2) the specialty by which the ancestor was supposed to be bound to acquit was not produced in the *Scire facias*, and (3) the defendant in *Scire facias* was not allowed the averment that he had nothing by descent of inheritance; but the judgment was affirmed, 214-216, 215-217, note.

In Error brought on the original judgment in Mesne above mentioned, the assignment of errors was that (1) the record purported that the defendant had been attached (and not summoned) to answer; (2) the record did not show that the parties were present when the inquest was taken, and (3) no express judgment as to acquittal of services was given, but only a writ to the Sheriff to distrain the defendant to acquit. The judgment was affirmed, previous records having been searched to show the practice, 216-222.

In Error brought on judgment for the plaintiff in Mesne, the assignment of errors was that (1) the verdict did not show that the plaintiff and his ancestors had been acquitted, but only the feoffor of his ancestor; (2) that the prescription in a stranger and not in the plaintiff's blood had been accepted, and (3) that a verdict had been taken on a matter of record. The judgment

61444.

**ERROR—cont.**

was affirmed for reasons stated in the report, 224-228.

Error in the King's Bench on proceedings in Oyer and Terminer, 258-260.

Assignment of error in that judgment had been given for a tenant because the demandant would not accept wager of law as to non-summons and non-essoins, whereas judgment should have been given for the demandant because the tenant had failed to produce any warrant of essoin, 298-300.

Error on assise of Fresh Force, 332.

**ESSOIN :**

If the attorney of the party be essoined, and the party be present in Court, the essoin shall be quashed, 96.

Essoin on the King's service does not lie in *Scire facias*, 180.

*Quere* as to essoins of tenant, in plea of land, after issue joined, 180.

**ESTOPPEL :**

To an allegation that a tenant held only at will it is a good estoppel if it can be shown that in a previous action he vouched and was warranted, 202, 276.

If, in Cosinage, view be demanded, the tenant is estopped from taking exception to the writ, even though he may have been vouched and re-vouched by the vouchee, 292-294.

If, in Formedon in the Descender, a fine be pleaded to show that the donor had no fee, it is no estoppel to the averment of a demandant (who was not a party to the fine) that the donor had a fee, 316-320.

**EXECUTION :**

If execution be sued on a Statute Merchant, and the Sheriff return that the obligor has no assets, and if it be known that he has assets within the liberty of Durham, what is the remedy? 160-162.

**EXECUTION—cont.**

Execution having been awarded on a Statute Merchant, the Sheriff returned that the obligor had no land or rent except in so far as he had leased to A. for life at a rent of two quarters of wheat and three of barley for the first six years, and of 100s. if the tenant held longer. The question arose whether the rent reserved was chattel or freehold. *Semble* that it was held to be a chattel, but *Quere*, 326–328.

Execution for damages by *Elegit* on affirmation of judgment in *Mesne*, 370.

See EXECUTORS; SCIRE FACIAS; SHERIFF; STATUTE MERCHANT.

**EXECUTORS:**

Certain executors having brought a writ of Debt, and it having been shown that others not named in the writ were named in the will, but had refused, it was held that all should have been named in the writ, and that the plaintiffs should take nothing, 344.

A recognisance having been made to A. and B., and A. having two executors and B. only one, the three sued execution, but the two did not appear and the other prayed execution, but could not have it until the two had been warned to sue, 388.

**EXTENT:**

Re-extent after, how obtained, 242–246.

**F****FAIR:**

Demand, in Dower, for the third part not of the fair but of the profit of the fair, 360.

**FALSE JUDGMENT:**

Where writ of False Judgment lies, and where writ of Error, 58.

**FALSE JUDGMENT—cont.**

If plaintiff in writ of False Judgment die, his heir has garnishment against the tenant, 370.

But if the tenant in the original action have nothing, *Quere* whether a re-summons lies against the tenants. Exception was taken on the point and waived, 466–468.

Assignment of errors, and joinder of issue to the country, as to customs, 468.

Upon reversal of judgment the suitors of the Court which gave the false judgment are amerced, 470.

**FALTY:**

Mode of doing fealty by man and wife to their lord, 446.

**FELON:**

A felon has been attainted after death, 230.

If one be outlawed for felony, and the outlawry be reversed, and the reversal be subsequently revoked, he is a felon from the time of the outlawry, 230.

**FINE OF LANDS, &c.:**

If A. acknowledge tenements to B., and grant that the same tenements, which C. holds for life, the reversion being to A. and his heirs, shall, after the death of C. and of A. (if A. survive C.), remain to B. and his heirs, the fine is not admissible, 2.

In a fine *sur don, grant, et render*, the render may not be for the lives of the renderors, being husband and wife, with remainder to the heirs of the husband, 128–130.

By fine A. granted to B. for life and to B.'s executors for two years afterwards, and then to C. for life, the reversion being to A. and his heirs, 344.

By fine two men and their wives released and bound themselves and their heirs to warranty, notwithstanding

**FINE OF LANDS, &c.—*cont.***

standing that such a fine used not to be admitted unless the wives were found, upon examination, to be par-ceners, 352.

*See* ATTORNMENT; QUID JURIS CLAMAT; SCIRE FACIAS.

**FORMEDON :**

Writ of, 96, 190, 372, 380, 462.

In Formedon in the Remainder the demandant alleged a gift to A. for life, with remainder to B. and the heirs of B. by his first wife, and claimed as the son of B. and B.'s first wife, alleging seisin in B. It was pleaded by the tenant that the remainder must be shown by a specialty, but the demandant replied that this was unnecessary where the remainder had already taken effect in possession. The decision does not appear, 196-200.

Formedon in the Descender, where the alleged gift was by devise in a place where lands were devisable. Pleadings and issue thereon, 372-376, 377, note 2.

In Formedon in the Reverter, a feoffment of demandant's ancestor with warranty was pleaded in bar. Argument as to the effect of this in relation to the Statute *de donis*, 388-394.

*See* ABATEMENT OF WRITS; AID OF THE KING; ESTOPPEL; PLEADING.

**FRANKALMOIGN :**

If land be given in frankalmoign, and there be subsequently a release of services, the seignory of the frankalmoign is saved, and that service descends in the blood of the first donor, 92-96.

**FRANKPLEDGE, VIEW OF :**

"Law-days," having the force of, 54, 55, note 2.

A "Teinure" or decennary or tithing court having the force of, 104-106.

**FRESH FORCE :**

Proceedings in Error, on assise of Fresh Force, in the Court of King's Bench, 56-60, 332.

Record of proceedings in Error (with recital of the original record of the assise of Fresh Force) and of affirmation of judgment, 475-482.

**G**

**GRACE, DAY OF :**

May be given against a Peer of the Realm, when the matter has been pleaded to judgment and is pending for judgment, 388.

By consent, where a Peer was party, 388.

**H**

**HEIRS :**

*See* FINE OF LANDS.

**HOMAGE :**

Receipt of homage precludes avowry for relief, 108.

Mode in which homage is done by man and wife to their lord, 446.

**HUNDRED :**

Avowry for suit to the Court of a, 106.

**I**

**INTRUSION :**

A writ of Intrusion was brought, on the seisin of the demandant's grandfather, and on an abatement alleged to have been made after the death of the late wife of the grandfather who had held in Dower. The tenants pleaded a release made by the demandant's brother, whose heir he was, during their seisin. The demandant replied that the dowress conveyed her estate to the tenants,



INTRUSION—*cont.*

and that the deed of release was made during their seisin, but that the brother who released was the demandant's younger brother, and died during the lifetime of his grandfather and the dowress, and never had any estate in the reversion, which descended to the demandant. The tenant rejoined that the brother was bound to warrant, and that after his death the demandant, as his heir, was so bound. The judgment does not appear, 412-424, 418, note.

## J

JOURNEYS ACCOUNTS, 146, 154.

## JUDGMENT :

Judgment that vouchee (who appears in person, notwithstanding non-return of *Sequatur suo periculo*) is of full age, though vouched as being under age, and effect thereof, 84-86.

Form of judgment in Dower, where the husband's heir is vouched, and warrants, 434-438.

*See* WARDSHIP.

## JURISDICTION :

When the King is plaintiff in *Quare impedit*, and it is alleged that the church is in Wales, where the King's writ does not run, the Court of Common Pleas nevertheless has jurisdiction, 148, 152.

The King may take his suit where he pleases, and the Court of Common Pleas has jurisdiction when a writ of Contempt is brought for non-appearance to a writ brought on behalf of the King in the Court of King's Bench, 346-348.

JURY PROCESS, 84, 162.

## K

## KING, THE :

Directs judges to proceed both by writ and by word of mouth, 142.

When the King has had judgment, and anything is attempted against it, and Attachment on Prohibition issues, there shall be attachment of the person, 266.

If writ of Entry be brought, and the tenant pray his age, and it be shown that the tenements are in the King's hand, the plea will not be heard without the King's special command, 278-280.

The King may take his suit in what Court he pleases, and a writ of of Contempt may be brought, on his behalf, in the Common Bench for neglect to appear to a writ in the King's Bench, 346-348.

*See* COUNCIL.

## KING'S BENCH, COURT OF :

*See* KING, THE.

## L

## LAW-DAYS :

Law-days (*laghedeyes*) in a certain hundred have the force of View of Frankpledge, 54, 55, note 2.

## LEET :

Mode of presentment at, 366-368.

## LUNATIC :

Wager of law, to save default, by a supposed lunatic, 248.

## M

## MAINPRISE :

If persons bound in Statute Merchant have been taken in execution, and *Audita Querela* be brought, the Court of Common Pleas cannot let them out on mainprise, but a

**MAINPRISE—cont.**

writ must be sued in Chancery for the purpose, 46, 180.  
A prisoner cannot be a mainpernor, 76.  
Mainprise of defendant in Account, 260-262, 294-296.

**MAINTENANCE :**

Array of assise procured on the nomination of a maintainer, as found by triers chosen and sworn, 4, 5, note 1.

**MARKET :**

Demand, in Dower, for the third part not of the market but of the profit of the market, 360.

**MAXIMS :**

*Ex nudo pacto non oritur actio*, 136.  
*Vigilantibus et non dormientibus, &c.*, 238.  
*Fraus et dolus nemini debent patrocinari*, 308.

**MERCHETUM :**

Avowry for, and definition of, 332-336.

**MESNE :**

If land have been given in frankalmoin by the defendant's ancestor, and the defendant have confirmed and released all services, he nevertheless retains the seignory with respect to the tenant, who does not thereby become tenant of the lord paramount, and he shall acquit the tenant of services, 92-96.

It is a good plea on a writ of Mesne that the lord paramount has neither fee nor seignory, 96.

In certain circumstances the mesne should put his own beasts in pound in place of those of the tenant which have been distrained, and then sue deliverance, *per* Sharde-  
lowe, J., 122.

The plea of *Hors de son fee* in, 166.  
The form of judgment in, 214-222.  
Execution for damages on affirmation of judgment in Mesne, 370.

*Ses ERROR.*

**MISCHIEF :**

The Court may change certain matters of process or practice when the previously accustomed course has been found productive of mischief, 126.

**MISNOMER :**

Question of misnomer of vill in assise tried by the jurors of the assise, 322.

**MORTMAIN :**

If lands be purchased in mortmain without license, and, after inquest of office, seized by the King, he cannot have a *Fieri facias* for the issues mesne between the purchase and the seizure, but there shall be garnishment to the purchaser, 222-224.

Lands delivered to a Prior in execution on a Statute Merchant, and so *Fraus Statuto (De Religiosis)*, 424-426.

*Elegit* denied to a person in religion, 426.

**N**

**NINTHS :**

Collection of, 264, 265-267, note.

**NISI PRIUS :**

No writ of *Nisi prius* in *Audita Querela* in favour of one who has been taken and imprisoned in execution of a Statute Merchant, 50.

**NON-SUIT :**

If an action be brought by a Prior, as Prior, and not by his baptismal name, and a successor afterwards proffer himself, there cannot be judgment of non-suit, and whatever exception may be taken must be to the writ, 172-176.

Non-suit in the King's Bench in *Scire facias* on a fine, because the plaintiff omitted to appear on the first day of the Octaves of St. John, after an adjournment made in the same term, 266-270.

## NOVEL DISSEISIN :

Challenge of array, in assise of, 4.  
Pleadings in assise of, 16-36, 340-344.  
When the assise is for rent service, the plaint must contain the words "with the appurtenances," 176.

The plaintiff questioned as to the kind of rent of which disseisin was alleged, 232.

In assise for rent, brought by the Warden of a Hospital, where a predecessor was seised but not the Warden himself, *Quere* whether the assise is maintainable on the ground that the predecessor was seised as in right of the Hospital, and not in his own right, 290-292.

In assise for rent the plaintiff had to state for what kind of rent the plaint was, and said it was rent-charge to be taken in a certain manor, through the hands of several tenants. The seisin was found by verdict, and it was then objected that there should have been several writs instead of a single writ, but seisin was awarded as of rent issuing from the manor, 320-322.

For rent granted on a condition which had been fulfilled, 322-324.

If a villein purchase land and aliene before the lord can enter, the alienation is good, and if the lord enter upon the alienee and be ousted by him no assise will lie, 324-326.

If defendant plead that a writ of a higher nature is pending, and fail to produce the record, he loses the land, and the assise is taken as to the damages, 358, 359, note 1.

If the defendant plead a previous record in bar, and fail to produce it on a day given, alleging that it had been with a Justice who could not be found in time, and that it is now in the Treasury, and pray another day, the plaintiff has judgment to recover seisin, 386-388.

See COMMON OF PASTURE ; ERROR.

## NUPER OBITI :

On plea that the tenant was a villein, which was not denied, judgment was given that the demandant should take nothing by his writ, though the demandant and tenant had before jointly brought a writ of Cosinage, 336-338.

## O

## OBLIGATION :

Acquittance for a part of the sum, purporting to be in satisfaction for the whole, bars an action, 84.

## OCTAVES :

Meaning and effect of an adjournment to the Octaves of a feast in various cases, 266-270.

## OUTLAWRY :

A., having been outlawed on a writ of Account, and a *Capias* having issued, the Sheriff brought in custody a person who said he was not (and whom the plaintiff admitted not to be) A. The Court would not notice the admission in a matter which might be to the King's disadvantage, but directed a writ to enquire, and subsequently an *Alias* writ, the prisoner meantime remaining in custody, 10-12.

If one be outlawed for felony, and the outlawry be reversed, and the reversal be subsequently revoked and the outlawry affirmed, he is a felon from the time of the outlawry, and though his feoffee may have had a title by purchase between the time of the reversal and the time of the revocation, it is lost by the revocation, 280.

If one be indicted and process of Outlawry be commenced against him, and pending that process he surrender, and be arraigned and plead his clergy, and be delivered to the Ordinary, and if his outlawry nevertheless

**OUTLAWRY—cont.**

be completed, and he subsequently produce a letter from the Guardian of the Spiritualities showing his purgation, the outlawry will be reversed, 270-274.

Process, where the defendant in Trespass surrenders and finds sureties before the outlawry is complete, and then fails to appear on a day given, 438.

If there be a process of Outlawry against two persons, and the Sheriff return "*utlagatus est*" in the singular, the Court is not apprised that they are outlawed, and a fresh Exigent is required, 456.

**OYER AND TERMINER :**

Writ of Error in the King's Bench on proceedings in Oyer and Terminer, 258-260.

**P**

**PARCENERS :**

If seignory be allotted to one and rent to another, the latter may avow, though the land be out of her fee (*per Counsel*), 104.

By common right, without composition, parceners to whom an advowson has descended present by turns ; and of three parceners the eldest shall have the first presentation, the middle one the second, and the youngest the third ; and if the eldest present twice, usurping on the middle one, and the youngest afterwards present at the third turn, that presentation shall be held to be by way of parcenary, 404-406.

An advowson remains "in common" between parceners, notwithstanding a composition, 406.

Construction of Statute Westm. 2, c. 5., in relation to parceners, 406.

PARK SILVER, 98.

**PARLIAMENT :**

See COUNCIL.

**PARTITION :**

How made in Chancery, 100.

**PEER OF THE REALM :**

Day of Grace against, 388.

PER QUAM SERVITIA, 380, 440.

**PETITION TO THE KING :**

Sent into the Chancery and thence into the King's Bench, 228-230.

**PLEADING :**

Pleadings in assise of Darrein Presentment, 6-10, 138-146.

Pleadings in assise of Novel Disseisin, 16-36.

Pleadings in *Cessavit*, where divine and other services are alleged, 448-450.

Pleadings on a writ of Intrusion, 412-424.

Pleadings in *Scire facias* on a fine, in the King's Bench, 60-64.

(*Detinue.*) If the defendant plead that a writing was delivered to him on a condition other than that stated in the declaration, as well as on that stated, it is no traverse, but an admission of the condition stated, 70-72.

(*Entry.*) If demandant allege that tenant had not entry but by B., and tenant allege that the entry was by B. and his wife, by fine, *Quare* whether the demandant's averment that the entry was by B. alone is admissible in opposition to the fine, 158-160.

(*Entry Dum fuit infra etatem.*) If A., being under age, and B. purchase land to hold to them and their heirs, and lease to C., and B. die, and A. bring *Dum fuit infra etatem*, C. may, as to a moiety, plead the joint demise as a traverse to the writ brought by A. alone, and may, as to the other moiety, plead that A. was of age at the time of the lease, and this is not double pleading. *Per* Hillary, Ch. J., 366.

PLEADING—*cont.*

If the entry be supposed to have been by A., and the tenant plead that he entered by A. and B., A.'s wife, by virtue of a fine, the demandant may nevertheless aver his writ, because there may have been a previous entry by A. alone, 452.

(Formedon in the Descender.) Plea to the jurisdiction that the lands were Ancient Demesne, 190-196.

If the demandant has counted, and the count is entered on the roll, and view be demanded and had, he shall not afterwards count again, 462.

(*Præcipe quod reddat*.) Pleadings where several non-tenures were alleged, 246.

(*Quare impedit*.) An Abbot pleaded that the church (as described by the plaintiff) was in fact a chapel annexed to a church appropriated to the religious House, without this that the alleged presentee of the plaintiff's ancestor was admitted. This was held to be duplicity, as traversing the plaintiff's title and claiming by appropriation, and the Abbot was compelled to hold to one, 42.

If the King seize the temporalities of an alien Prior, who had the right of presentation, and bring his writ of *Quare impedit*, and the Prior plead that the church was not vacant at the time of the seizure or at any time since, and tender an averment to that effect, and the Bishop of the diocese have certified into Chancery that the church was vacant after the time of seizure, the Prior may nevertheless be admitted to the averment, and issue may be joined thereon, 148-150, 147-149, note.

(Right of Advowson.) Protestation not entered, 70.

PLEADING—*cont.*

(Waste.) If tenant plead a conveyance in fee of earlier date than the lease for term of years on which the plaintiff sues, the plaintiff may reply that he leased for the term, *absque hoc* that the tenements passed by the conveyance in fee, 72-74, 73, note 2.

*See* ACCOUNT; DARREIN PRESENTMENT; ESTOFFEL; RECEIPT; REPLEVIN; VOUCHER; WARRANTY.

## POPE, THE :

Alleged to have sole power to make provision or gift to a prebend which has become vacant through the creation at the Court of Rome of a prebendary to be bishop, 162.

"Collation" by, to a prebend, 164.

## PRÆCIPERE QUOD REDDAT :

Writ of, 96, 166, 198, 246, 254, 298, 306, 394.

*See* PLEADING; VOUCHER.

## PREBEND :

*See* QUARE IMPEDIT.

## PRIOR :

*Prior dativus*, removable at the will of an alien Abbot, 302-306.

## PRISONER :

A prisoner cannot be a mainpernor, 76.

## PROCESS :

Where aid is to be had of husband and wife, 56.

Jury Process, 84.

On Voucher, 84-86.

The Court may make a change in the process formerly in use where mischief arises, 126.

In *Audita Querela*, 254.

On writ of Entry and alleged variance, 254-256.

On *Præcipe quod reddat*, where there are two demandants, 306.

Discontinuance of, in Detinue, 508.

PROCESS—*cont.*

In Debt, where the defendant, having been parson of a church, had effected an exchange of benefice, 808-810, 816.

In Trespass, 438.

PROCLAMATION :

See *WARDSHIP*.

PROHIBITION :

See *ATTACHMENT ON PROHIBITION*.

PROTECTION :

See *WARDSHIP*.

PROVISION :

See *POPE, THE*.

PUTURE, 64.

Q

QUARE IMPEDIT :

Writ to the Bishop awarded, though the Grand Distress could not be served, 2.

Cognisance of pleas not allowed in, 40, 42.

Issue whether a church was vacant after the day on which the King seized the temporalities of an Alien Priory, 147-152, 147-9, note.

Judgment for the King against a parson who claimed nothing except as parson imparsonce, 149, note.

*Quare impedit*, in respect of a prebend, brought against the Bishop of London by the King, who counted that it became vacant through the creation of a prebendary to be Bishop of Norwich, and that it remained vacant until the temporalities of the bishopric of London came into the King's hand, through the death of a certain bishop. It was pleaded that the prebend did not become vacant as supposed by the count, and averment thereof was tendered. On behalf of the King it was alleged that the prebendary was created Bishop at the Court of

QUARE IMPEDIT—*cont.*

Rome, that the Pope, with whom alone it rested so to do, had not made provision, and judgment was prayed whether the averment could be admitted. It was held that the Court had nothing to do with that matter, and therefore the averment was accepted and issue was joined, 162.

*Scire facias* for execution of judgment in *Quare impedit*, 164.

If the King's title be that he is seised by reason of wardship, and the defendant plead that the infant's ancestor held only at his (or his ancestor's) will, and that he is seised of the manor to which the advowson is appendant, and a record be shown on behalf of the King, in which the defendant appears to have warranted parcel of the manor in fee simple, and the King allege that the ancestor had a like estate in the residue of the manor, issue may be taken as to whether the land demanded in the record was parcel of the manor or not, 200-202, 274-276.

Construction of the Statute 14 Ed. 3., St. 4. c. 2., 262-264.

*Quare impedit* relating to a prebend must be brought in the county in which the *corpus* of the prebend is, without regard to the county in which is the church of which it is a prebend, 396-400.

See *ABATEMENT OF WRITS; PLEADING*.

QUARE NON ADMISIT :

If the writ is to be brought against the Guardian of the Spiritualities, when a Bishop has not admitted, it must be simply against the Guardian, without mention of the Archbishop, 346.

QUID JURIS CLAMAT :

Cognisor acknowledges to A., and grants that the tenements (which B.

**QUID JURIS CLAMAT—cont.**

holds for life, with remainder to C. for life, and of which the reversion is to the cognisor) shall remain to A. in fee. A *Quid juris clamat* shall be sued against both B. and C., but the tenant shall attorn, and if B. die pending the suit, C., if surviving, shall attorn, 2.

**R****RECEIPT :**

In Waste a wife cannot be admitted to defend, on her husband's default, after verdict passed, but must make her prayer before the award of the *Venire*, 72, 276.

In Dower brought against husband and wife as guardians, the wife cannot be admitted to defend on her husband's default, because wardship is only a chattel, and the wife consequently has no interest in it, 122, 428-432.

If a wife be admitted on default of her husband, and herself afterwards make default at *Nisi prius*, and a reversioner on the day given in the Bench pray to be admitted, it is no good counterplea to say that he ought to have prayed to be admitted before, 440.

**RELEASE :**

If, in assise of Novel Disseisin, title be made by release, it must be affirmed that there was freehold by title in the releasor, 20.

A general release of all actions will support an allegation in *Audita Querela* that the creditor has received the money, 178.

**RELIEF :**

There can be no avowry for relief after receipt of homage, 100.

**REMAINDER :**

See **FORMEDON**.

**RENT :**

If an assise of Novel Disseisin be brought for rent service the plaint must contain the words "with the appurtenances," 176.

In assise of Novel Disseisin the plaintiff is questioned as to the kind of rent, 232.

If one recover rent he does not become seised by the words of the judgment without further execution, 292.

A writ of Trespass lies where there has been distress for a rent which is extinct, 306-308.

For rentcharge granted to be taken in a manor, through the hands of several tenants, a single writ of assise of Novel Disseisin is sufficient, 320-322.

If A. grant rent to B. on condition, and with power to re-enter on payment of a certain sum to B. at a certain time, and tender the money at the time, and if B. refuse the money, and the tenant C. having attorned continue to pay the rent to B., and if A. levy a distress in lieu of entry, which distress is rescued, and A. then bring assise of Novel Disseisin against C., *Quere* whether this is the remedy, and whether B. is not tenant, 322-324.

If A. lease land to B. for B.'s life at a rent of two quarters of wheat and three of barley for the first six years, and 100s. if B. hold longer, *semble* that the rent reserved is only a chattel, but *Quere*, 326-328.

Demand of rent in Dower and voucher of the husband's heir to warranty, 358-360.

**REFLEVIN :**

If cognisance be made by the defendant as bailiff of husband and wife in respect of amercements for non-attendance at "law-days" or view of frankpledge to which the wife

REPLEVIN—*cont.*

has right, and if the plaintiff aver that he was not resiant at the time alleged, the bailiff shall have aid of the husband and wife, 54-56, 55, note 2.

Avowry for rent in arrear by guardian of infant whose father had leased the tenements to the plaintiff, 88-90.

If the action be brought against A. and B., and A. deny the taking, and issue be joined thereon, B. may nevertheless make cognisance as A.'s bailiff, 100, 104.

If partition be made between parceners, and a manor be allotted to one sister A., and the fees regardant thereto be allotted to another sister B., *Quere* can A. distrain for rent and service, or is there a good plea of *Hors de son fee*? 98-104.

Avowry for suit to a "Teinure," (*i.e.*, decennary or Tithing Court), 104-106.

Avowry for suit to a Hundred Court, 106.

If A. bring Replevin against B., and B. avow for certain services, and A. plead a conveyance of the tenements in virtue of which he attorned to D., of whom he holds, and D. come and acknowledge that A. holds of him, and he over of B., by less services than have been alleged, *Quere* whether he can then join himself with A. in pleading. *Quere* also whether B. can in law avow on anyone but D., 106-126.

After receipt of homage there can be no avowry for relief, 108.

Avowry for arrears of a third part of services assigned as Dower. Plea that the tenements were held of the King *in capite*, and showing how. Replication showing a different title to the seignory, with an *absque hoc* as to certain facts alleged in the plea.

REPLEVIN—*cont.*

Rejoinder in support of facts alleged in the plea, and issue thereon, 154-158.

Avowry for *damage feasant*. Plea alleging common, of nature stated, by prescription. Replication denying alleged common. The plaintiff has aid of his wife, 251, 257-259, note.

Avowry by persons appointed by commissioners to assess and levy ninths, on the ground that the plaintiff had not paid the amount at which he was assessed for the ninth of his sheaves. Plea that the place where the distress was levied was in a different parish, and issue thereon, 264, 265-267, note.

The plaintiff has aid of his wife, who is summoned, 300, 301, note 3.

Avowry for *merchetum*, 332-336.

If the plaintiff allege that the defendant is in possession, and the defendant allege that deliverance was made, the question cannot be tried by jury, and the plaintiff can only sue a writ to have the deliverance, 352.

Avowry that the defendant had a Leet to which all resiants, free and others, ought to come, that his bailiff should choose 12 free men to present and deliver their names to the Steward, who should swear them, and that the plaintiff, being a free man and so chosen, was amerced for refusing to take oath; and for the amercement the defendant avowed. The mode of presentment was not admitted by the plaintiff, but issue was nevertheless joined on the avowry, 366-368.

The avowry being for rentcharge, the tenant of a fourth part of the manor charged alleged that he held for life only, and prayed aid of the reversioner, and had it without pleading to issue, 376-380.



**REPLEVIN—cont.**

**Avowry** on A., the heir of B. (D.'s tenant), by C., whose father D. had been seised. The plaintiff (E.), who was a stranger, pleaded that D. released all his right by deed to B. Issue was joined in law as to whether the plea lay in E.'s mouth. The judgment is not stated, 462-464.

If the avowry be for a taking for *damage feasant* in a particular wood which is the avowant's several, and the plaintiff plead that it was in another place, which is the plaintiff's freehold, the avowant need not answer as to whether the wood is his several or the plaintiff's common, and the issue shall be as to whether the place is in or out of the wood, 464-466.

**RESUMMONS :**

A wife being admitted on default of her husband, vouches, and is warranted, but, pending the plea, the warrantor dies. A resummons issues against the wife alone, as the husband has already lost by default, 178.

**RIGHT OF ADVOWSON :**

Mode of joining the mise in, 68-70.

Protestation not allowed in, 70.

Writ of, 96-98, 172-176, 258, 259, note 2.

See **ABATEMENT OF WRITS.**

**RIGHT DE RATIONABILIBUS DIVISIS,****WRIT OF :**

After joinder in aid the demandant counts against both the tenant and the prayee in aid, and if after the mise has been joined the latter make default, his default shall be recorded, but the mise will stand for the tenant, 188-190, 278.

**ROME, THE COURT OF :**

Creation of Bishop at, 162.

**S****SCIRE FACIAS :**

*Sci : fa :* to regain lands delivered by virtue of *Elegit*, 52-54.

*Sci : fa :* in the King's Bench, to have execution of a fine, 60-64.

*Sci : fa :* in the King's Bench, to have execution of judgment in *Quare impedit*. It was brought against the Guardian of the Spiritualities of a Bishopric, the Dean and Chapter, and a prebendary who held on the "collation" of the Pope. They all made default, and execution was awarded, 164.

*Sci : fa :* in the King's Bench, to have execution of a fine of the whole of a manor, where a writ had been directed to the Treasurer and Chamberlains of the Exchequer to send the tenor of the fine as to two parts of the manor into the Chancery, and they had sent the tenor of the whole fine, which was sent by *Mittimus* from the Chancery into the King's Bench, 234.

*Sci : fa :* in the King's Bench, to have execution of a judgment. Prayer of age by tenants claiming to be in by descent, and prayer of aid of the minors by other tenants alleging that they were parceners, and that partition had been made. Both prayers disallowed, 236-242.

*Sci : fa :* in the King's Bench, to have re-extent after execution by *Elegit*, 242-246.

*Sci : fa :* against a parson for arrears of an annuity recovered against his predecessor, 276.

*Sci : fu :* in the King's Bench, to have execution of a fine, and non-suit of plaintiff, 266-270.

*Sci : fu :* in the King's Bench, to have execution of a fine, and pleadings thereon, 280.

SCIRE FACIAS—*cont.*

*Sci : fa :* in the King's Bench, on a recognisance, against the *ter-tenants*, the obligor being dead, 280-282.

*Sci : fa :* in the King's Bench, to have execution of a fine, brought by the issue in tail of a remainder-man who had been seised, and pleadings thereon, 282-286.

*Sci : fa :* to have execution of a fine, where aid was prayed of a reversioner under age, and the aid was allowed, and the minority was denied, 456-458.

*Sci : fa :* to have execution on judgment in *Mesne*, *see* ERROR.

SEA-WALLS :

Repair of, 86-88.

SEIGNORY. *See* FRANKALMOIGN ; PAR-OWNERS.

SERJEANTS-AT-LAW :

Payment of, 846.

SERVICE :

If the tenure be such that upon alienation every purchaser shall pay a fine at the will of the lord, that is a service, 98, 104.

SHERIFF :

If, pending an action of *Darrein Presentment*, the defendant therein sue a writ of *Quare impedit* against the plaintiff, and the Sheriff return that the plaintiff in the *Quare impedit* would not find pledges to prosecute, and it be shown that pledges were in fact admitted, no writ shall issue to cause the Sheriff to answer for his false return, because no plea can be made on the *Quare impedit*, but only on the *Darrein Presentment*, 6.

Return of Sheriff to a writ of livery on Statute Merchant that he had sent to the bailiff of the liberty, who had not made execution because the

SHERIFF—*cont.*

lands were Ancient Demeane held jointly by the obligor and his wife, and issue of an *Alias Testatum* writ thereon, 130.

*Quere* as to sufficiency of Sheriff's return *Non est inventus nec aliquid habet* to Grand Distress, 176.

A Sheriff's return to a *Scire facias* that he has warned the party to appear before the King's Justices at Westminster at a certain date, without specifying the purpose, is insufficient, but if he add the words "to do what the writ requires," or "according to the tenour or form of the writ," it is good, 196.

STATUTES CITED :

52 Hen. III. (Stat. Marl.), c. 1, 308.

\_\_\_\_\_ c. 12, 138.

\_\_\_\_\_ c. 13, 92.

3 Edw. I. (Westm. 1), c. 40, 196.

6 Edw. I. (Gloucester), c. 3, 392.

\_\_\_\_\_ c. 4, 448, 450.

7 Ed. I. (*De Religiosis*), 426.

13 Edw. I. (Westm. 2), c. 1 (*De donis conditionalibus*), 300, 390-394.

13 Ed. I. (Westm. 2), c. 3, 198.

\_\_\_\_\_ c. 4, 354.

\_\_\_\_\_ c. 5, 406.

\_\_\_\_\_ c. 9, 112, 220.

\_\_\_\_\_ c. 25, 358.

\_\_\_\_\_ c. 32, 426.

\_\_\_\_\_ c. 41, 448, 450.

\_\_\_\_\_ c. 45, 236, 242.

456.

\_\_\_\_\_ c. 48, 250.

18 Edw. I. Stat. 1 (*Quia emptores*), 110, 118, 464.

20 Edw. I. (*De defensione juris*), 432-434.

1 Edw. III. St. 1, c. 4, 56.

14 Edw. III. St. 1, c. 6, 32, 308.

14 Edw. III., St. 4, c. 2, 262, 264.

STATUTES, CONSTRUCTION OF :

Construction of the framer of an Act cited, 392.

## STATUTE MERCHANT :

A writ having issued to take the body of the debtor, and the Sheriff having returned *Nem est inventus*, the debtor, though he had not a day, came into Court and said that there was no certificate of the Statute in the Chancery. It was held that his proper course was to sue a writ to this effect from the Chancery to the Justices, and, in the absence of such writ, execution was awarded, 4-6.

Action of Account where the plaintiff had made a Statute Merchant to the defendant, who had had execution thereon, 74-78.

A Statute Merchant may be described as a writing obligatory, 78.

Lands delivered to a Prior in execution on a Statute Merchant, and so *Fraus Statuto (de Religiosis)*, 424-426.

See APPEARANCE ; AUDITA QUERELA ; EXECUTION ; MAINPRISE ; SHERIFF.

## SUR QUI IN VITA :

Form of, and degrees in the writ of Entry, 454.

Aid in, 458-460.

## SURETY :

Surety for issues under 20 Edw. I. (*De defensione juris*), 432-434.

## T

## TITHING :

Avowry for suit to the Court of a "Teinure," or tithing, which is equivalent to View of Frankpledge, 104-106.

## TRESPASS :

Action of, for non-repair of sea or river walls, 86-88.

If a lord distrain where no services are in arrear, though the distress be levied within the lord's fee, a

## TRESPASS—cont.

writ of Trespass lies for the tenant, *per* Sharshulle, J., 122.

Issue as to the place in which a distress was levied, 250-252.

The defendant pleads a release of all actions, and the plaintiff replies that it was made under duress. The defendant rejoins that duress cannot be alleged, because the plaintiff had of his own free will had the deed enrolled in the Exchequer. Afterwards the plaintiff *non pros*, 252-254.

If A. distrain B. for rent in arrear, when the rent is extinct, and detain the distress, B. shall have a writ of Trespass, and, upon verdict found for him, shall have damages as well as recovery, 306-308.

Process in action of, 438, 456.

## TRIERS :

Chosen and sworn, find that the panel in an assise of Novel Disseisin was arrayed on the nomination and at the pleasure of a maintainer, 5, note 1.

## V

## VACATION :

The Courts were closed during vacation, and access could not be had to a record, 386.

## VARIANCE :

If a surname in a *Venire facias* be not accordant with that in the *Audita Querela* upon which it issues, the variance is fatal, even though the *Venire facias* be in accordance with the acquittance which is the ground of the *Audita Querela*, 310.

## VENIRE FACIAS :

Against obligee in recognisance, after the obligee has had execution by *Elegit*, 243, note 1.

**VENUE :**

If issue be joined as to duress of imprisonment, the jury shall come from the neighbourhood in which the imprisonment is alleged, 178-180.

If issue be joined as to whether certain land is parcel of a manor or not, the jury shall come from the neighbourhood in which the gross of the manor is, and not from that in which the parcel is, 202, 274-276.

If issue be joined as to whether one was under age at the time of the execution of a deed, the jury shall come from the place at which the deed was made, and it is for the party using the deed to state the place; but if it be alleged that nothing passed, or that the alienor was not seised when the deed was made, the jury shall come from the place where the land is, 452-454.

Upon a writ of False Judgment given in a Court of Ancient Demesne, issue was joined as to customs, and there was caused to come by the Sheriff a jury composed of persons resiant within the Ancient Demesne, but having lands in the geldable, 470.

**VIEW :**

If view be demanded, in the Court of Common Pleas, on a writ of Entry in the *Post*, and counterpleaded on the ground that view has already been had of the tenements upon a little writ of Right, which abated for want of jurisdiction, it shall be granted, 250.

If Dower be demanded of the profit of a fair or market, and view be demanded, and it be counterpleaded that the tenant entered by the husband, the counterplea is good, though the view is demanded of the soil, 360.

**VILLEIN :**

Where writ of Trespass is brought against A. and three others, he pleads that the three are his villeins, and that he ought not to be put to answer with them, 86-88.

If A.'s villein purchase land, and aliene it by deed to B. and C., and A. bring assise against B. on the ground that the alienation was a disseisin, and that he subsequently entered and was seised until disseised by B., and B. plead joint-tenancy, which A. does not deny, the alienation shall be held good, and judgment shall be given for B., 324-326.

If A. and B. bring a writ of Cosinage against C., which abates through C.'s death, and B. enter, and A. bring a writ of *Nuper obiit* against B., and B. plead that he is a villein, and A. do not deny the disability, A. takes nothing by his writ, 336-338.

**VOUCHER :**

The vouchee shall be summoned to warrant according to the demand, though the tenant allege that the quantity is less, and the allegations on both sides shall be entered on the roll, but without averment, 44.

If tenant have prayed aid of the King and had it, and a writ to proceed have issued, and the tenant vouch and show that the ancestor of the vouchers rendered the tenements to the King to the use of the tenant's ancestor, whom the King enfeoffed, he shall have the voucher, 78-80.

Process in Voucher where the tenant vouches one as being under age, and the demandant alleges that he is of full age, 84-86.

If no return be made to the writ of *Sequatur suo periculo*, when the vouchee has been vouched as being under age, and the tenant has alleged that he is of full age, and if the vouchee on the day appear in

VOUCHER—*cont.*

person, the Court will not there-upon adjudge seisin of the land to the demandant, but will inspect the vouchee as to his age. If, upon view, the Court adjudge him to be of full age, he shall not be put to warrant immediately, but shall be summoned, 84-86.

If husband and wife are vouched, it is not a sufficient counterplea, under the Stat. Westm. 1. c. 40, to say that neither the husband and wife nor the ancestors of the wife ever had anything since the seisin, but it is necessary to say nor the ancestors either of the husband or of the wife, 196.

Voucher of two sons as heirs, on writ of Dower, and the reason, 330-332.

Where the Sheriff returned that the vouchee was dead, and the party vouched another who was a stranger in blood, the voucher was disallowed in the absence of cause shown, 356.

Voucher of the husband's heir to warranty where rent was demanded in Dower, 360.

It was pleaded in abatement of a writ of *Præcipe quod reddat* against B. that the demandant had brought a like writ in respect of the same tenements against A., who had vouched B. and her late husband, and upon the death of the husband had revouched B., and that the voucher was pending. It was held that B. must answer, 394-396.

See WARRANTY.

## W

## WAGER OF LAW :

If, after waging his law, a tenant appear without those who should perform the law with him, it is no default, 168.

Wager of law by a supposed lunatic, 248.

## WALES :

If in *Quare impedit* it be alleged that the church is in Wales, where the King's writ does not run, the exception is of no avail when the King is a party, 148, 152.

## WALLS, SEA OR RIVER :

Action of Trespass for non-repair of, 86-88.

## WARDROBE, THE KING'S :

Matter of record in, 62-64.

## WARDSHIP :

If defendant appear to the Proclamation and plead to issue, and if the parol demur by reason of a Protection, and the defendant subsequently make default, there shall not be judgment for the plaintiff on default after Proclamation, but the plaintiff shall recover damages for the day of default, and may sue a *Distingas* against the defendant to hear the verdict, 90-92.

## WARRANTY :

In Dower the heir of the husband, having been vouched, entered into warranty, and "rendered dower" as one having nothing by descent of inheritance. The demandant prayed dower against the tenant. It was held that if the warrantor had assets by descent the demandant should recover against him, but, if not, against the tenant. The tenant alleged that the warrantor had assets in another County, upon which point issue was joined. The jury found that the warrantor had nothing by descent of inheritance. The demandant had execution against the tenant, the warrantor being in mercy, 86-88, 89, note 1.

A affment with warranty made by demandant's ancestor was pleaded in bar to Formedon in the Reverter. Arguments as to the effect of this in relation to the Statute *De donis*, 388-394.

**WARRANTY—cont.**

The effect of warranty by deed of a collateral, 420-424.

Though a term of years does not lie in warranty, yet if an estate for life be enlarged by a term of years to commence after the death of lessee for life, the estate of freehold is not impaired, 436.

Form of judgment in Dower where the husband's heir vouches, and the vouchee warrants, 434-438.

Counterplea of warranty on the ground that a deed purporting a conveyance with warranty was made between the time of the purchase of a writ of assise of Novel Disseisin, on which the vouchee recovered, and execution, and issue thereon, 440-444.

*See* VOUCHER.

**WASTE :**

Judgment to recover will not go beyond the finding of the jury upon view, 370.

**WASTE—cont.**

Pleadings in action of Waste, against tenant in dower, brought by one to whom the reversion had been granted. Issue that no waste had been committed since the attornment, 426-428.

Waste committed "*exulando nativos*," 427, note 5.

*See* PLEADING ; RECEIPT.

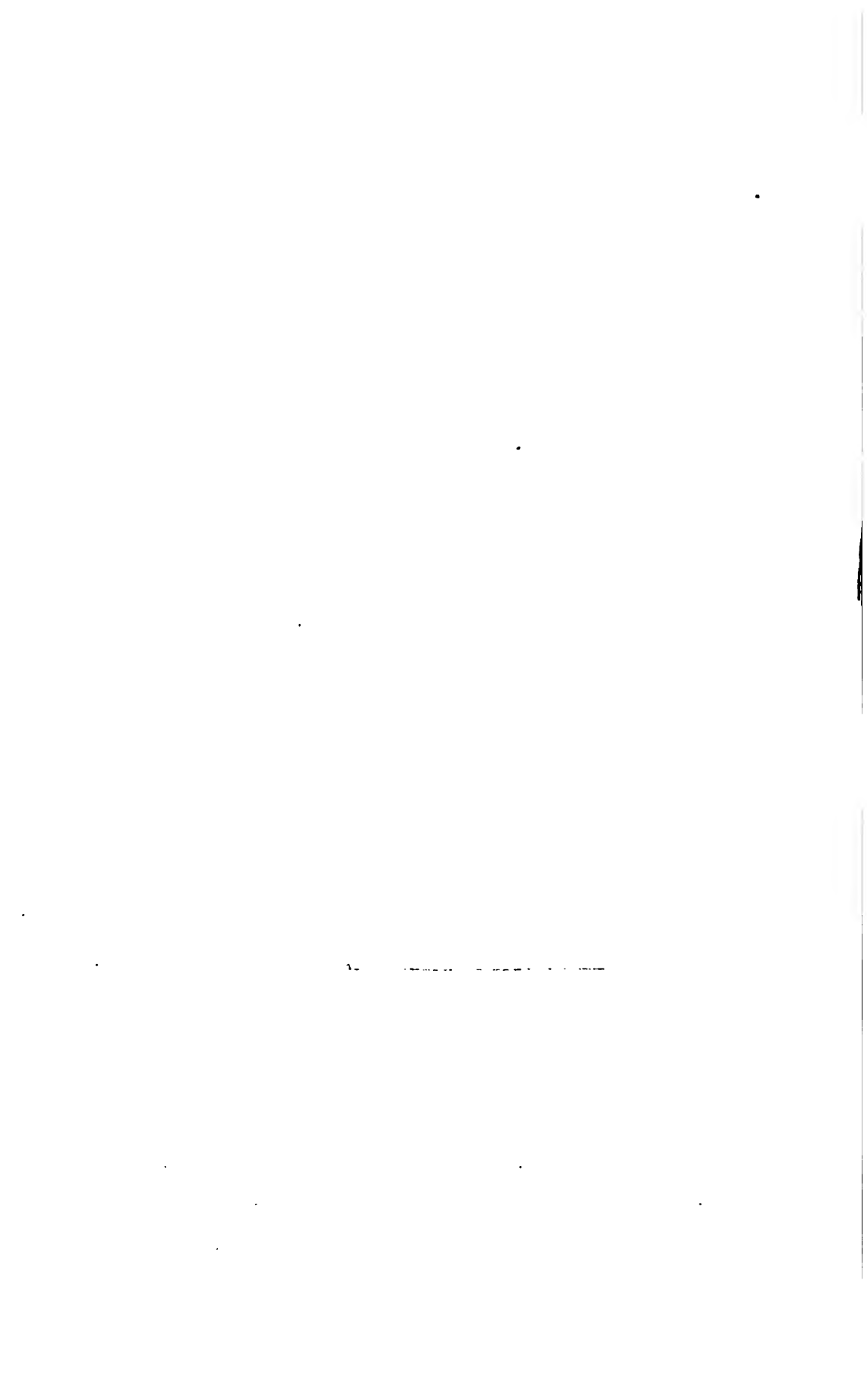
**Y**

**YEAR AND DAY :**

*See* APPEAL.

**YEAR, DAY, AND WASTE :**

Whatever time may have elapsed before the King has claimed the year, day, and waste, to which he has the right, he shall have the mesne profits, 324.



( 515 )

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INDEX OF PERSONS AND PLACES.

---

KK 2





## INDEX OF PERSONS AND PLACES.

---

### A

- Abberbury, William, plaintiff in Error on judgment in Novel Disseisin, 202-214.  
 Abingdon, John le Spicer of, plaintiff in Trespass, 253, note 1.  
 —, Robert, Abbot of, 253, note 1.  
 —, Roger, Abbot of, defendant in Trespass, 253, note 1.  
 Acton, John, son of Odo de, plaintiff in *Scire facias* on a fine, 282-286.  
 Andreu, Thomas, son of Reginald, defendant in writ of Cosinage, 293, note 4.  
 Angemerynge, Peter de, otherwise called Peter Potyng, 401, note.  
 Angus, Gilbert de Umframvyle, Earl of, 281, note 2.  
 Appelby, Robert, son of Stephen de, defendant in Replevin, 265, note.  
 Appleby (Lincoln), vill and parish of, 264, 265-267, note.  
 Assheby, Jehn de, 261, note 1.  
 Atte Garston, 157, note.  
 Atte Grove, Richard, 61, note 1; 401, note.  
 Atte Leye, John, defendant in Trespass, 306-308.  
 Atte Pute, John, 63, note.  
 Audale, Hugh de, Earl of Gloucester, defendant in Replevin, 98-104.  
 —, Margaret his wife, 98-104.  
 —, James de, and Margery his wife, defendants in assise of Novel Disseisin, 358, 359, note 1.  
 Aust (Gloucester), the manor of, 425, note 2.

- Auvynggdane [Ovingdean?], John le White of, 55, note 2.  
 Ayremynne, William de, prebendary of St. Paul's, London, created Bishop of Norwich at the Court of Rome, 162.

### B

- Babenham, William de, and Robert his son, tenants to several *Præcipes* in writ of Formedon, 190-196, 191, note 1.  
 —, Joan, wife of William de, 191, note 1.  
 —, Alice, daughter of William and Joan de, 191, note 1.  
 Bacheworth, or Bachesworth (Batchworth?), Sarah de, defendant in assise of Novel Disseisin, 5, note 1.  
 —, Richard de, lord of the vill of Harefield (Middlesex), 13, note 1.  
 Badlesmere, Giles de, his wife Elizabeth, and his sisters Margery, Matilda, Elizabeth, and Margaret, 281, note 2.  
 Barbour, or le Barber, Hamond, citizen of London, defendant in *Audita Querela*, 178-180, 482.  
 Barde, William, the elder, defendant in Replevin, 88-90.  
 Bardenay. *See* Bardney.  
 Bardney, or Bardenay (Lincoln), the Abbot of, 265, note.  
 Batchworth. *See* Bacheworth.  
 Bayous, John de, knight, 265, note.  
 Beauflour, Emma, mother of John, 16, 26, note; 28.

- Beaufour, James, 16, 18, 20, 22, 24, notes; 26, note; 34.  
 —, John, and Margery his wife, Ralph his apprentice, and Stephen his servant, defendants in assise of Novel Disseisin, 16-36, 17, note 4.  
 —, William, 20, 22, 23, note 2; 24, 26, note; 28, 30, 34, 36.  
 Beaulieu, the Abbot of, tenant in writ of Formedon, 380-386.  
 Beaumont, Henry de, 356.  
 Beansits, Richard, 401, note.  
 Bedford, the chapel of, 202-204.  
 Bee, John le, of Stockton, plaintiff in writ of Mesne, 167, note 2.  
 Belesby, William de, knight, and Joan his wife, demandants in Dower, 331, note 7.  
 Bentley (Hants), messuage and land in, 279, note 2.  
 Berkyng, Stephen de (or Stephen of Barking), servant of John Beaufour, defendant in assise of Novel Disseisin, 17, note 4.  
 Beverley, Walter Frost of, 377, note 2.  
 —, Richarde de Hugat of, 377, note 2.  
 —, messuages in, 377, note 2.  
 —, tenements devisable in, by custom, 377, note 2.  
 Billoby, Adam de, parson of the church of Edgefield (Norfolk), tenant in action of Waste, 78, note 2.  
 Birston, Thomas de, demandant in action of Waste, 78, note 2.  
 Bisley (Gloucestershire), tenements in Budesfeld nigh, 318, note.  
 Blake, Adam, defendant in Replevin, 155, note.  
 Blechingley (Surrey), the manor of, 99-104, 101, note 2.  
 Blount, Margery la, of Cerney, 318, note.  
 Boddenho, John de, defendant in Error on judgment in Novel Disseisin, 202-214.  
 Bohun, William de, Earl of Northampton, and Elizabeth his wife, 281, note 2.  
 Bolingbroke, the fee of, 190.  
 Bonyngton, Edmund de, plaintiff in writ of Account, 260-262, 261, note 1.  
 Bothel, Robert, 319, note.  
 Boteler, J., 274, 276.  
 Boteler, Ralph, defendant in *Quare impedit*, 274-276.  
 —, Thomas le, of Lincoln, 71, note 2.  
 See Botiller.  
 Botiller, or Boteler, Ella, late wife of William le, of Wem, plaintiff in assise of Darrein Presentment, 138-146, 139, note 1; 144.  
 Boulwas (Buildwas?), John de, plaintiff in *Quare impedit*, 41, note 1.  
 —, John de, son of Roger de, tenant in writ of Entry, 441, note 7; 443, note.  
 Bowysare, Adam le, a "*nativus*," 427, note 5.  
 Bradele [Bradley St. George?] (Lincolnshire), the Soke of, custom of, that the youngest son is heir, 332, note.  
 Bramber (Sussex), the barony of, 55, note 2; 156, note 1.  
 —, the honour of, 156.  
 Braose, Brewes, Brewosa, or Brus, William de, 156, note; 158.  
 —, William, son of John de, 156, note.  
 Bray, Gervase de, demandant in writ of Right of Advowson, 69, note 1.  
 —, his ancestors, *ib.*  
 —, Ingelram de, and Beatrice his wife, 69, note 1.  
 Braybroke, Gerard de, son of Gerard, plaintiff in Error on judgment in *Scire facias* to have execution of judgment in Mesne, 214-216, 215-217, note.  
 —, plaintiff in Error on judgment in Mesne, 216-222.  
 —, John de, 215-217, note; 217-221, note.  
 Brewes. See Braose.  
 Brewosa. See Braose.  
 Brightford (Sussex), the Hundred of, 55, note 2.  
 Brimfield (Hereford), the church of, 41, note 1.  
 Broun, Hamond, or Hamond le Brun, and his wife Christina, 60, 61, note 1; 62, 63, note.  
 —, John son of Henry, or of Henry le Brun, demandant in *Scire facias* on a fine, 60-64, 61, note 1.

Broun, Thomas, and Joan his wife, tenants in *Scire facias* on a fine, 60-64, 61, note 1.  
 Brounsmith, W., 240.  
 Browes, Thomas, plaintiff in *Scire facias* on a fine, 266-270.  
 Brun, le. *See* Broun.  
 Brns. *See* Braose.  
 Brutford, the modern Brightford (Sussex), the Hundred of, 55, note 2.  
 Brykenille, John, son of Thomas de, demandant in writ of Entry *dum fuit infra etatem*, 279, note 2.  
 —, William de, brother of John, 279, note 2.  
 Rudesfeld. *See* Bisley.  
 Buildwas. *See* Boulwas.  
 Bukmynter, William de, knight, tenant in writ of Dower, 354-356.  
 Burgeys, John, mortally wounded in a brawl in Westminster hall, 274.  
 Burmyngham, William de, defendant in writ of Mesne, 167, note 2.  
 Burnham, Adam de, 191, note.  
 Burton Agnes, vicarage of, 132.  
 Burton, William de, and Elizabeth his wife, plaintiffs in assise of Darrein Presentment, 401, note.  
 Bynteworth, Richard de, Bishop of London, 162.  
 Byroun, Geoffrey, and Anabilla his wife, defendants in assise of Darrein Presentment, 7, note 2.

C

Candevere, Philip de, 303, note.  
 Cantek, "Magister" Roger, tenant in writ of Dower, 435, note 2.  
 Carleton, William de, clerk deputed to take recognisances of debts in London, 483.  
 Carrou, or Carru, Eleanor, late wife of Nicholas, tenant in writ of Right of Advowson, 259, note 1.  
 — —, John de, tenant in writ of Right of Advowson, 258, 259, note 1.  
 Carru. *See* Carrou.  
 Causton, William, son of Michael de, defendant in Trespass, 306-308.

Cerney (Gloucestershire), Margery la Blount of, 318, note.  
 Chesterton, Margery, late wife of John de, of Grantham, demandant in Dower, 354-356.  
 Chewton, lands, &c. (including 22 "*hospites*") at, granted by Henry I. to the Abbey of Jumièges, 304, note.  
 Chilham, Rose, wife of Robert de, 378, note.  
 Clare, John de, 78, 80.  
 —, Gilbert de, Earl of Gloucester, and his heirs, 98, 100, 102.  
 Clerk, Walter, son of John le, of Triplow, tenant in writ of Cosinage, 293, note 4.  
 Clyfford, Henry de, and Matilda his wife, demandants in Formedon in the Descender, 317, note 2.  
 Clynton, W., Earl of Huntingdon, and Juliana his wife, tenants in writ of Formedon, 96.  
 Cnytune. *See* Knighton.  
 Cokyngton, James de, demandant in writ of Entry, 256, note.  
 Coleville, Desiderata (Desirée) de, 199, note 2.  
 —, Geoffrey de, 199, note 2.  
 —, John de, knight, demandant in writ of Formedon, 198-200, 199, note 2.  
 Colville, George, 368.  
 —, John, 368.  
 —, Thomas, 368.  
 Cookham (Berks), lands, &c. in, and the manor of, alleged to be Ancient Demesne, 191-193, note; 196.  
 Copandale, Adam, indictment for death of, 270-274.  
 Coston, John de, and Juliana his wife, demandants in *Dum fuit infra etatem*, 363, note 2.  
 Coucy, William de, son and heir of Christiana de Lindsey, his brother Ingram, and his son William, 108, 110, 111, note; 112, 126.  
 Creak, the Abbot of, defendant in *Cessavit*, 448-450.  
 Crowhurst (Surrey), land in, 61 note 1; 63, note.  
 Cullebach, the manor of, 200-202.  
 Curteys, Michael, 401, note.

## D

- Dalton, the Court of the Abbot of Furness of, 106.  
 Daunsel, Richard, 458, 460.  
 Del Isle, John, knight, plaintiff in Replevin, 265-267, note.  
 Derby, John de, 202-214.  
 Dereham (Gloucester), the manor and advowson of the church of, 435, note 2.  
 Despenser, Hugh, the son of H., the son of H., demandant in *Præcipe quod reddat*, 96.  
 —, Hugh, son of Hugh le, 102, note.  
 —, Hugh le, exile of, repealed, the repeal itself repealed, and the effect on purchasers, 228-230.  
 Dory, John, 449, note 1.  
 Doune, John, defendant in Replevin, 259, note.  
 Drax, the Prior of, demandant in writ of Right of Advowson, 96-98.  
 —, tenant in writ of Right of Advowson, 172-176.  
 Dunham, prebend of, in the church of Southwell (Notts), 263, note.

## E

- Edesham, Geoffrey de, Canon of Lincoln, defendant in Detinue, 71, note 2.  
 Edgefield (Norfolk), Adam de Billooby, parson of the church of, 78, note 2.  
 Ely, Eustace, Bishop of, 83, note 1.  
 —, John, Prior of, 83, note 1.  
 —, the Chapter of, 83, note 1.  
 Escure, John, son of, John de, 379, note.  
 —, Thomas de, plaintiff in Replevin, 377, note 3.  
 Eye, the church of, 40, 41, note 1.

## F

- Fécamp, the Abbot of, a purchaser in mortmain without license, 222.  
 Fencotes, Thomas de, 368.

- Fitz-Gilbert, Warin, or Warin son of Gilbert, 83, note 1.  
 Fitz-Warin, Gilbert, or Gilbert son of Warin, 83, note 1.  
 Fitz-Waryn, Falk, tenant in Formedon in the Descender, 318, note.  
 Flekeneye Haywod, John de, defendant in Replevin, 257, note.  
 Foreste, Richard de la, chaplain, demandant in writ of Entry, 441, note 7.  
 Freckleton (Lanc.), lands in, 299, note 1.  
 Frekilton (Freckleton), Elena, late wife of Adam de, demandant in *Præcipe quod reddat*, 299, note 1.  
 —, John, son of Robert de, tenant in *Præcipe quod reddat*, 299, note 1.  
 Fromount, Thomas Jonesservant (*i.e.*, Thomas, the servant of John Fromount), defendant in Replevin, 98-104, 99, note 1.  
 Frost, Walter, of Beverley, tenant in writ of Formedon, 377, note 2.  
 Fulbourne (Cambridge), Nicholas, chaplain of the chapel of St. Edward, plaintiff in writ of Annuity, 83, note 1.  
 —, Luke Primerole, parson of the church of St. Vigor, defendant in writ of Annuity, 83, note 1.  
 —, Richard, parson of St. Vigor's, 83, note 1.  
 —, Gilbert Fitz-Warin, or son of Warin, patron of the church of, 83, note 1.  
 —, Warin Fitz-Gilbert, or son of Gilbert, patron of the church of, 83, note 1.  
 Furness, the Abbot of, defendant in Replevin, 106-126.

## G

- Garderobe, John de la, tenant in writ of Formedon, 191, note.  
 —, Nicholas de la, 346, 347, note 5.  
 Garston, atte, and Clarice his wife, his son Adam, and his grandson, 157, note.  
 Gatewayk, Joan de, defendant in Replevin, 155, note, 158.

Getewyk, John de, formerly husband of Joan, and his daughters Katharine, Margaret, and Elisabeth, 155, note.  
 —, Richard de, 157, note.  
 Gedney (Lincoln), services for lands in, 449, note 1.  
 Gilbard, Robert, a "*nativus*," 427, note 5.  
 Gloucester, Hugh de Audele, Earl of, defendant in Replevin, 98-104.  
 —, Gilbert de Clare, Earl of, 98, 102.  
 —, descent of Gilbert's lands to par-  
 ceners, 100, 102.  
 Godesfeld. *See* Godesfeld.  
 Godesfeld, or Godesfeld (Gosfield), John  
 de, plaintiff in assise of Novel Dissei-  
 sin, 16-36, 17, note 4.  
 Godwinston (Kent), the manor of, 378,  
 note.  
 Gosfield. *See* Godesfeld.  
 Graa, W., of York, tenant in writ of For-  
 medon in the Reverter, 388-394.  
 Gransden. *See* Grantesdene.  
 Grantesdene, Little (probably Little Grans-  
 den, Cambridgeshire), John de Weston,  
 parson of, 316, 317, note 1.  
 Grene, Robert del, of Octon, defendant in  
 writ of Account, 261, note 1.  
 Grenham, Thomas de (son of Peter de),  
 defendant in Replevin, 333, note 3.  
 —, Ralph de (great-grandfather of  
 Thomas), and Mabel his wife, 334, note.  
 —, Peter, son of Ralph de, 334, note.  
 —, Ralph, son of Peter de, 334, note.  
 Grimsby, John and Edmund Reynier, of,  
 331, note 7.  
 Grove, Richard atte, 61, note 1; 401, note.  
 Gustene, John de, plaintiff in Replevin,  
 301, note 3.  
 — —, Christina, wife of, 301, note 3.  
 Gydesham (Devon), manor of, 256, note.

H

Hamelak, William de Roos of, (father and  
 son), 37, note 2.  
 — —, and Margery, his wife, 281,  
 note 2.  
 Hameldone, W., 352.

Hardyngtone, Richard de, 279, note 2.  
 Harefield, or Herefeld, or Herfeld (Mid-  
 dlesex), Robert de Melchebourne, of,  
 15, note 1.  
 — —, the vill of, and tenements in,  
 15, note 1; 183, note 4.  
 — —, common of pasture in, 183,  
 note 1.  
 Harwedone, Henry de, defendant in *Quare  
 impedit*, 263, note 2.  
 Haselholte, Simon de, plaintiff in Reple-  
 vin, 154-158; 155, note.  
 —, his grandfather Simon, 155, note;  
 158.  
 —, his father Simon, 155, note.  
 —, his ancestor Simon, 156, note.  
 Hastings, T., plaintiff in Waste, 276.  
 Hatentoft, or Hautentoft, Nicholaa de,  
 and Elizabeth her daughter, 400, 401, note.  
 —, William de, and Isabella his wife,  
 their son Thomas, and their daughters,  
 Nicholaa, Lucy, and Olive, 401, note.  
 Haye, John de la, 140, 141, note.  
 Hayling, called Haryngeye or Harengeye  
 in the time of Henry I., 304, note.  
 —, the Prior of, writ of Contempt  
 against, 302-306.  
 — —, his relation to the Abbot of  
 Jumièges, 302-306.  
 Henyne, Rogen de, plaintiff in assise of  
 Novel Disseisin, 359, note 1.  
 Herefeld, or Herfeld. *See* Harefield.  
 Hereward, William, 140, note.  
 Heryng, Richard, 61, note 1.  
 Hewere, William le, defendant in assise of  
 Novel Disseisin of Common, 183, note 1.  
 Hildresham, Ethelreda de, 18, 19, note 2.  
 Holywell, or Haliwell (Oxford), the Court  
 of the Warden of Merton, and suit  
 thereto, 477.  
 Hoo, Peter de, 261, note 1.  
 Hopton, Walter de, 139, note 1.  
 Hosatis, W., mentioned in a charter of  
 William the Conqueror, 304, note.  
 Houton, William, son of "Tidemannus"  
 de, demandant in Formedon, 377, note 2.  
 —, Robert de, and Joan his wife, 377,  
 note 2.

Hugat, Richard de, of Beverley, 377, note 2.

Hulle, John del, 335, note.

Hulles, Roger, a "*nativus*," 427, note 5.

Humber, repair of walls against the tides of the, 86-88.

Huntingdon, W. Clynton, Earl of, and Juliana his wife, tenants in writ of Formedon, 96.

—, the Earl of, and his wife, tenants in writ of Entry, 388.

Husseborne (perhaps Hurstbourne), William de, 303.

## I

Idle, Robert de (De Lisle?), defendant in writ of Wardship, 90-92.

Ifeld, J. de, 52.

Inge, Isabel, 52.

—, Isolda, late wife of William, 243, note 1.

Ingmanthorpe, Mabel, late wife of W. Roe, of, 388-394.

Irton, J. de, and A. his wife, said to have been defendants in assise of Darrein Presentment, 10.

—, Stephen de, and Joan his wife, plaintiffs in assise of Darrein Presentment, 7, note 2.

Isle, John del, knight, plaintiff in Replevin, 265-267, note.

## J

Jacoby, U., "collated" to a prebend by the Pope, 164.

Jumièges, the Abbot of, Head of the Priory of Hayling, 304, 303-307, note.

—, Grants to the Abbey of, by William the Conqueror and Henry I., as by charters cited, 304, note.

## K

Ketton (Rutland), Alice, late wife of Robert de Neubotle, of, 333, note 3.

—, the manor of, 333, note 3.

Kilpeck (Hereford), the manor of, 427, note 3.

King, the, his writ *De corodio habendo*, and Contempt, 64-66, 302-306, 346-352.

—, seizes the temporalities of alien men of religion owing allegiance to the King of France, 149, note; 152.

—, plaintiff in *Quare impedit*, 146-152, 162, 200, 262, 263, note 2; 274-276, 396-400.

—, *Scire facias* to have execution for, on judgment in *Quare impedit*, 164.

Kirkeby, William de, 378, and note.

Kirkstede, the Abbot of, demandant in writ of Right de *Rationabilibus Divisis*, 188-190.

Knighton (Caytune), church of, granted by William the Conqueror to the Abbey of Jumièges, 304, note.

Knyght, Alice le, and Roger her son, tenants in *Dum fuit infra etatem*, 363, note 2.

—, John, son of Richard le, 363, note 2.

## L

Lancaster, Henry, Earl of, plaintiff in writ of Wardship, 90-92.

Langele, Bartholomew de, 347, note 5.

Langenhirst, William de, 61, note 1.

Langton, J., son of N., plaintiff in action of Debt, 132.

La Sele. *See* Seal.

Latymer, the Lady of, 128.

Ledece, Alice, and Christiana her sister, 216, note.

Lee (or Leye), Almaria, late wife of Adam atte, defendant in assise of Novel Disseisin, 17, note 4; 19, note 3.

Leicester, Roger de, 401, note.  
 Lengham, land at, granted by Henry I to the Abbey of Jumièges, 804, note.  
 Leset, Thomas de, 377, note 2.  
 Lestrangle, Roger, cousin and heir of Ebulc, 188-190, 278.  
 Leukenore, John, and Elizabeth his wife, 446.  
 Levinefeld (Linfield?) (Surrey), messuage and land in, 61, note 1; 63, note.  
 Leye, John atte, defendant in Trespass, 306-308.  
 —, *See Lee*.  
 Lille, Robert, defendant in writ of Wardship, 90-92.  
 Lincoln, Alesia (or Alice), Countess of, tenant in writ of Right *de Rationabilibus Divisis*, 188-190, 278.  
 —, Geoffrey de Edenham, canon of, 71, note 2.  
 —, Thomas le Boteler of, 71, note 2.  
 Lindsey, Christiana de, and her son William de Coucy, 106, 108, 110-111, note; 118.  
 Linfield (Surrey). *See* Levinefeld.  
 Lisle, Robert de, 90, note 2.  
 Litellion, John, goldsmith, defendant in assise of Novel Disseisin, 17, note 4.  
 Lodelowe, Agnes de, 443, note.  
 —, Isabella, daughter of Laurence de (the elder), and sister of William de, 443, note.  
 —, Laurence de, the elder, 443, note.  
 —, Laurence, defendant in Trespass, 438.  
 —, Laurence, son of William de, vouches on writ of Entry, 440, 443, note.  
 —, William, father of Laurence, and brother of Isabella de, 443, note.  
 Lomene, Christina de, 256, note.  
 Lomene Richard (Devon), manor of, 256, note.  
 London, the Bishop of, defendant in *Quare impedit*, 162, 396-400.  
 —, John de Pulteneye, Mayor of, 483.  
 —, the Ward of Baynard's Castle in, 254-255, note; 484.  
 —, Langbourn Ward in, 484.  
 —, the Parish of St. Edmund the King in, 484.

London, the Prior of Christ Church, plaintiff in assise of Novel Disseisin, 324-326.  
 —, the prebend of Osgate in the church of St. Paul, 162, 396-400.  
 Louepitte (perhaps Luppitt) (Devon), church of, 259, note 1.  
 Louth, Louthe, or Lowthe, Thomas de, and Margaret his wife, defendants in assise of Novel Disseisin, 5, note 1.  
 — —, defendants in assise of Novel Disseisin of Common, 13, note 1; 183, note 1.  
 Lovel, William, 255, note.  
 Lowargh, John, defendant in assise of Novel Disseisin, 359, note 1.  
 Lucas, Adam, Justice of Assise in London, 484.  
 Lucham, Ralph de (or of), apprentice of John Beauflour, defendant in assise of Novel Disseisin, 17, note 4.  
 Lumley. *See* Lunlay.  
 Lunlay (Lumley?), Marmaduke de, demandant in writ of Entry, 136.  
 Luppitt (Devon). *See* Louepitte.  
 Lyleford (Lincoln), hamlet of, 267, note.

M

Macer, Roger le, 356.  
 Machoun, Richard le, 318, note.  
 Manby, John, son of John de, of Beverley, indicted for the death of Adam Copandale, 270-274.  
 Mareys, Reginald de, his daughter Beatrice, and her descendants, 69, note 1.  
 Manorbier (Pembroke), church of, 147, note.  
 Malvern. *See* Salverne.  
 Marlow, Great, Richard le Muleward, of, 178, note 1; 482.  
 Maunsel, Dionysia, late wife of Richard, of Tirlington [Tur-Langton?], tenant in writ of Intrusion, 413, note.  
 —, John, son of John, of Tirlington, 413, note.  
 —, Thomas, son of John, of Tirlington, demandant in writ of Intrusion, 413, note.



"Maynorbir" (Manorbier), church of, 147, note.  
 Melchebourne, Robert, son of John de, of Harefield (Middlesex), plaintiff in assise of Novel Disseisin of Common, 13, note 1; 183, note 1.  
 —, Agnes, late wife of John de, 182, 185, note.  
 Melton, William de, Archbishop of York, 263, note 2.  
 Merton, the Master, *Custos*, or Warden and Scholars of. *See* Oxford.  
 —, the Prior of, writ of Contempt against, 346-352.  
 Mody, Philip, defendant in Replevin, 265, note.  
 Molyna, John, or John de, defendant in assise of Darrein Presentment, 138-146, 189, note 1.  
 —, John de, 484.  
 Montibus, Ebulo de, 333, note 3.  
 Mor, Robert del, 335, note.  
 Mortimer, Hugh de, and M. his wife, plaintiffs in assise of Novel Disseisin, 340-344.  
 Moubray, John de, and Joan his wife, Replevin against the bailiff of, 55, note 2.  
 —, John de, defendant in *Scire facias* on a fine, 266-270.  
 Mulesgrove, John de, petitions the King as to a purchase from Hugh le Despenser, 228-230.  
 Mulewarde, Richard le, of Great Marlow, plaintiff in *Audita Querela*, 178-180, 482.

## N

Neubottle, Alice, late wife of Robert de, of Ketton, plaintiff in Replevin, 333, note 3.  
 —, William, son of Robert de, 335, note.  
 —, Robert and Henry, sons of William de, 335, note.  
 —, Mabel, sister of the last-named Robert de, 335, note.  
 —, Robert, Richard and William, sons of the last-named Robert de, 335, note.

Neubottle, Olive, sister of Robert, Richard, and William de, 335, note.  
 Neubottlefe, fee called, 333, note 3.  
 Neumarch, Roger de, defendant in writ of Mesne, 92-96.  
 Neville, John de, 354-356.  
 Newenham, or Newham, the Abbot of, demandant in writ of Right of Advowson, 258, 259, note 1.  
 Newham. *See* Newenham.  
 Northampton, William de Bohun, Earl of, and Elizabeth his wife, 281, note 2.  
 Northiby, Alan, defendant in Replevin, 265, note.  
 Northo, or Northoo, William de, and Olive his wife, 401, note.  
 —, William de, son of the above, defendant in assise of Darrein Presentment, 401, note.  
 Norwich, William de Ayremynne created Bishop of, at the Court of Rome, 162.  
 Nosley, or Nousele (Leicester), manor of, 257, note.  
 Nousele. *See* Nosley.

## O

Octon (Yorkshire), Robert del Grene of, 261, note 1.  
 Orby, or Orreby, J. de, 332.  
 Orleton, the manor of, 443, note.  
 Ormond, Eleanor, Countess of, plaintiff in action of Waste, 426-428.  
 Otmysby, William de, 199, note 2.  
 Orreby. *See* Orby.  
 Ovingdean (Sussex). *See* Auvyngdene.  
 Oxford, Robert de Trengre, Master, *Custos*, or Warden of the House of the Scholars of Merton, plaintiff in assise of Fresh Force. Judgment and proceedings in Error thereon, 56-60, 332, 475-482.  
 —, John de Saltford, Prior of the House of Austin Friars without Smithgate, defendant in the above-mentioned assise of Fresh Force, 56-60, 332, 475-482.  
 —, Henry de Stodlee, Mayor of, 475.  
 —, Richard de Pirye, Sub-bailiff of, 476

Oxford, messuages and land in the suburb of, without Smithgate, 476.  
 —, the Guildhall of, 476.  
 —, Court of the Mayor and Bailiffs of, 476.  
 —, customs of the town of, 478, 479, 481.  
 —, the Earl of, and his wife, 78.  
 —, John de Veer, Earl of, and Matilda his wife, 281, note 2.  
 Oxgate (St. Paul's, London), prebend of, 162, 396-400.

P

Passelewe, M., 340.  
 —, Simon, 191, note.  
 Payn, Thomas, and Alice his wife, 279, note 2.  
 Pembroke, the Countess of, plaintiff in Trespass, 456.  
 —, the Prior of, defendant in *Quare impedit*, 146-152.  
 Penebrugge (Pembroke), Henry de, 427, note 5.  
 Pickering (Yorkshire), the Wapentake of, 88-90.  
 Pile, John, defendant in assise of Novel Disseisin, 17, note 4.  
 Pirye, Richard de, Sub-bailiff of Oxford, 476.  
 Plokenet, or Pluknet, Sibilla, or Isabel, late wife of Alan, defendant in action of Waste, 426-428, 427, note 5.  
 Pole, William de la, formerly Chief Baron of the Exchequer, accusation against, 188.  
 Potyng, Peter, otherwise called Peter de Angemeryng, 401, note.  
 Pridias, Thomas, and Sibilla, or Isabel, his wife, 384.  
 Primerole, Luke, parson of St. Vigor's, Fulbourne, defendant in writ of Annuity, 83, note 1.  
 Pulteneye, John de, Mayor of London, 483.  
 Pute, John atte, 63, note.

Putton, William, son of William de tenant in writ of Entry *dum fuit infra etatem*, 279, note 2.  
 Pynkeny, or Pynkeney, Henry de, demandant in Formedon, 190-196, 191, note 1.

R

Ramsey, Simon, Abbot of, tenant in writ of Formedon, 199, note 2.  
 Randessene, John, plaintiff in Replevin, 89, note 2.  
 Reading, the Abbot of, defendant in *Quare impedit*, 40-44, 41, note 1.  
 Beyner, John, of Grimsby, clerk, and Edmund his brother, tenants in writ of Dower, 331, note 7.  
 Risby (Lincoln), parish of, 267, note.  
 Rivere, Joan, late wife of Thomas de la, tenant in *Præcipe quod reddat*, 394-396.  
 —, John, son of Thomas de la, 394.  
 Rodaborough (Rodborough), Matilda, late wife of Miles de, 318, note.  
 Rogeroun, Roger, 326.  
 Rolleman, Thomas, tenant in action of Waste, 73, note 2.  
 Roos, Margaret, late wife of John de, demandant in action of Dower, 36, 37, note 2.  
 —, —, plaintiff in *Cessavit*, 449, note 1.  
 —, William de, of Hamelak, 37, note 2.  
 —, William de, son of William de, of Hamelak, 36, 37, note 2.  
 —, W. de, and his wife, 78.  
 —, William de, of Hamelak, and Margery his wife, 281, note 2.  
 Ros, Isabel, late wife of W., of Ingmanthorpe, demandant in Formedon in the Reverter, 388-394.  
 Rotheryk, Thomas de, 243, note 1; 318, note.  
 Roxby. See Wrexby.  
 Russel, Eleanor, late wife of Theobald, demandant in Dower, 435, note 2.  
 —, Ralph, son and heir of Theobald, 435, note.  
 Rusyndon, Walter, 401, note.  
 Rymyngton, Ranulph de, 299, note 1.

## S

Sadyngton, Robert de, plaintiff in Replevin, 257, note.  
 —, Jocosa, wife of Robert de, 257, note.  
 St. Cleere (Cornwall), advowson of the church of, 69, note 1.  
 St. James, the Warden of the Hospital of, plaintiff in assise of Novel Disseisin, 290-292.  
 St. John of Jerusalem, in England, the Prior of, tenant in writ of Right of Advowson, 69, note 1.  
 St. Kevern (Cornwall), the church of, 380.  
 St. Paul, John de, Prebendary of York, demandant in writ of Entry, 456.  
 St. Quintin, Herbert de, plaintiff in writ of False Judgment, 370, 466.  
 —, Herbert, son of Herbert de, continues his father's suit, 466.  
 Salop, John de Weston, Dean of, 316.  
 Saltford, John de, Prior of Austin Friars, Oxford. *See* Oxford.  
 Salverne (probably Malvern), Little, the Prior of, 330.  
 Sandhurst, John de, 379, note.  
 —, Thomas de, of Tilmanston, defendant in Replevin, 377, note 3.  
 Sandwich, Nicholas de, defendant in Replevin, 301, note 3.  
 Savage, John, Prior of Pembroke, 147, note.  
 Saweshulle, Richard, defendant in action of Debt, 132.  
 Scot, John, defendant in Replevin, 259, note.  
 Scoteneye, John de, 279, note 2.  
 Scrope, Henry le, and M. his wife, 342.  
 —, W. le, 342.  
 Seal, or La Sele (Sussex), land in, 155, note.  
 Segburghe, J., defendant in *Quare impedit*, 262.  
 Sherborne, the Abbot of, writ of Contempt against, 64-66.  
 Shipley (Sussex), the church of, 401, note.  
 Sifrewast. *See* Stifrewas.

Simeon, Simon, 352.  
 Sodyngton, Thomas de, and Margery his wife, 318, note.  
 Somerton Castle, 354-356.  
 Somery, John, plaintiff in *Audita Querela*, 310-314.  
 Southwell (Notts), prebend in the church of, 262.  
 — — —, Dunham prebend in the church of, 263, note 2.  
 Southwick (Sussex), land in, 155, note.  
 Spenser, Hugh, son of Hugh le, demandant in writ of Formedon. *See* Despensar.  
 Spicer, John le, of Abingdon, plaintiff in Trespass, 253, note 1.  
 Sprotleford, Richard de, demandant in writ of Cosinage, 293, note 4.  
 Stalyngburgh, William and John, sons of Walter de, knight, 331, note 7.  
 Stevens, John, of Tottenham, plaintiff in Trespass, 306, note 1.  
 Stifrewas (or Sifrewast, &c.), Roger, knight, plaintiff in *Audita Querela*, 44-52.  
 Stockton, John le Bee, of, plaintiff in writ of Mesne, 167, note 2.  
 Stodlee, Henry de, Mayor of Oxford, 475.  
 Stourmouth (Kent), the manor of, 378, note; 380.  
 Sturel, Isabella, late wife of John, and her aunts Cecilia and Margery, and their descendants, 293, note 4.  
 Surrey, John de Warenne, Earl of, 388.  
 Sutton, the manor of, in Sutton-on-Trent (Notts), 37, note 2.  
 Swanland, Simon de, a maintainer and procurer of an assise of Novel Disseisin, 4, 5, note 1.  
 Swynnerton, Richard de, plaintiff in Debt, 317, note 1.

## T

Talbot, Richard, 458, 460.  
 Tandridge (Surrey), the manor of, 98-104, 101, note 1.  
 Tany, Gilbert de, 33, note 1.

Tassant, John, 64, 66.  
 Taunton, the Hundred of, 104, 106.  
 Tewkesbury, Nicholas de, defendant in *Audita Querela*, 310-314,  
 Thirnum, John de, 261, note 1.  
 Thorpe, William de, 446.  
 Tilmaston (Kent), John de Sandhurst, of, 377, note 3.  
 —, Roger de, his sisters Rose, Florence, Joan, and Matilda, and his nephew John, son of Joan, 378, note.  
 —, the manor of, 378, note.  
 Tiptoft, John de, and Margaret his wife, 281, note 2. *See* Typtost.  
 Tirlington (perhaps Tur-Langton) (Leicester), tenements in, 413, note.  
 —, Maunsel de, and Gunnilda his wife, and John his son, 413, note.  
 —, Thomas and John Maunsel, of, grandsons of Maunsel de, 413, note.  
 Tornerghe, John de (or John Tournier), plaintiff in Replevin, 106-126.  
 Tournier. *See* Tornerghe.  
 Trengre, Robert de, Warden of Merton. *See* Oxford.  
 Triplow (Cambridge), messuage and land in, 293, note 4.  
 —, Walter, son of John le Clerk, of, 293, note 4.  
 Tur-Langton (Leicester). *See* Tirlington.  
 Typtost (or Tiptoft), J., and his wife, 78.

U

Ulverston, the vill or barony of, 108, 110-111, note.  
 Umframvyle, Gilbert de, Earl of Angus, 281, note 2.  
 Urry, William, plaintiff in Replevin, 55, note 2.

V

Vaghan, W., knight, defendant in action of Debt, 352.  
 Veer, John de, Earl of Oxford, and Matilda his wife, 281, note 2.

Verdon, Vivian de, and Joan his wife, 7, note 2.  
 Vesci. *See* Veyse.  
 Veyse, Nicholas le, or Nicholas Vesci, 12, 13, note 1.

W

Walmesford, "Magister" Hugh de, plaintiff in Detinue, 71, note 1.  
 Walsoken (Norfolk), land in, 199, note 2.  
 Walton, Henry de, 147, note.  
 Warbelton, John de, plaintiff in Replevin, 98-104, 99, note 1.  
 Warenne, John de, Earl of Surrey, 388.  
 Wedone, Ralph de, defendant in *Audita Querela*, 44-52, 180.  
 Welbeck, the Abbot of, plaintiff in writ of Mesne, 92-96.  
 Wenn, Ella, late wife of William le Botiller, of, 139, note 1.  
 Weston, John de, parson of the church of Little Grantedene (Gransden), and afterwards "Dean of Salop," defendant in Debt, 316, 317, note 1.  
 Weston Turville (Bucks), the church of, 139, note 1.  
 Whetyngdon, William, son and heir of John de, 63, note.  
 White, John le, of Auvynggdene (Ovingdean?), defendant in Replevin, 55, note 2.  
 Willesthorpe, Robert de, 261, note 1.  
 William the Conqueror, grant of, to the Abbey of Jumièges cited, 304, note.  
 Willoughby (Wylughby), Florence, wife of Richard de, and Joan her sister, plaintiffs in assise of Novel Disseisin, 5, note 1.  
 —, Richard de, and Joan his wife, tenants in action of Dower, 37, note 2.  
 Winterbourne Stoke, church of, land at, and five "*hospites*" granted by William the Conqueror and Henry I. to the Abbey of Jumièges, 304, note.

Woburn, the Abbot of, defendant in Error on judgment in *Scire facias* to have execution of judgment in Mesne, 214-216.

— —, defendant in Error on judgment in Meane, 216-222.

Wodemancote (Sussex), the manor of, 401, note.

Wodhill, John de, defendant in assise of Novel Disscisin, 340-344.

Worcester, services demanded by the Prior of St. Mary's, 167, note 2.

Wragby. *See* Wrexby.

Wrexby, or perhaps Wragby, or Boxby, the church of, 172.

Wyerne, William, and Robert his father, and Robert his son, 88-90.

Wylyngton, Henry, son of Henry de, tenant in writ of Entry, 254-256.

Wyntreshulle, William de, 63, note.

Wyville, Robert, knight, defendant in Replevin, 257, note.

## Y

Yenge, Alan, chaplain, 293, note 4.

York, the Prior of the Trinity of, tenant in writ of Right of Advowson, 96-98.

— —, demandant in writ of Right of Advowson, 172-176.

—, W. Graa, of, 288.

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## CONTENTS.

---

|                                                                                 |   |   |   |   |   |   |           |
|---------------------------------------------------------------------------------|---|---|---|---|---|---|-----------|
| CALENDARS OF STATE PAPERS, &c.                                                  | - | - | - | - | - | - | Page<br>3 |
| CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND DURING THE<br>MIDDLE AGES | - | - | - | - | - | - | 8         |
| PUBLICATIONS OF THE RECORD COMMISSIONERS, &c.                                   | - | - | - | - | - | - | 21        |
| WORKS PUBLISHED IN PHOTOZINCOGRAPHY                                             | - | - | - | - | - | - | 23        |
| HISTORICAL MANUSCRIPTS COMMISSION                                               | - | - | - | - | - | - | 25        |
| REPORTS OF THE DEPUTY KEEPER OF THE PUBLIC RECORDS                              | - | - | - | - | - | - | 29        |
| <hr/>                                                                           |   |   |   |   |   |   |           |
| SCOTCH RECORD PUBLICATIONS                                                      | - | - | - | - | - | - | 34        |
| IRISH RECORD PUBLICATIONS                                                       | - | - | - | - | - | - | 35        |
| REPORTS OF THE DEPUTY KEEPER OF THE PUBLIC RECORDS, IRELAND                     | - | - | - | - | - | - | 36        |

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# ENGLAND.

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CALENDAR OF DOCUMENTS relating to IRELAND, in the Public Record Office, London. *Edited by HENRY SAVAGE SWEETMAN, B.A.,* Barrister-at-Law (Ireland); continued by GUSTAVUS FREDERICK HANDCOCK. 1875-1886.

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CALENDAR OF STATE PAPERS relating to IRELAND, OF THE REIGNS OF HENRY VIII., EDWARD VI., MARY, AND ELIZABETH, preserved in the Public Record Office. *Edited by* HANS CLAUDE HAMILTON, F.S.A. 1860-1890.

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CALENDAR OF STATE PAPERS, COLONIAL SERIES. *Edited by* W. NOEL SAINSBURY, of the Public Record Office. 1860-1889.

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These volumes include an analysis of early Colonial Papers in the Public Record Office, the India Office, and the British Museum.

CALENDAR OF LETTERS AND PAPERS, FOREIGN AND DOMESTIC, OF THE REIGN OF HENRY VIII., preserved in Her Majesty's Public Record Office, the British Museum, &c. *Edited by* J. S. BREWER, M.A., Professor of English Literature, King's College, London (Vols. I.-IV.); and *by* JAMES GAIRDNER, an Assistant Record Keeper (Vols. V.-XII.). 1862-1890.

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These volumes contain summaries of all State Papers and Correspondence relating to the reign of Henry VIII., in the Public Record Office, in the British Museum, the Libraries of Oxford and Cambridge, and other Public Libraries; and of all letters that have appeared in print in the works of Burnet, Strype, and others. Whatever authentic original material exists in England relative to the religious, political, parliamentary, or social history of the country during the reign of Henry VIII., will be found calendared in these volumes.

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The Carew Papers are of great importance to all students of Irish history.

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Rymer's "Fædera," is a collection of miscellaneous documents illustrative of the History of Great Britain and Ireland, from the Norman Conquest to the reign of Charles II. Several editions of the "Fædera" have been published, and the present Syllabus was undertaken to make the contents of them more generally known.

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# THE CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND DURING THE MIDDLE AGES.

[ROYAL 8vo. Price 10s. each Volume or Part.]

On 25 July 1822, the House of Commons presented an address to the Crown, stating that the editions of the works of our ancient historians were inconvenient and defective; that many of their writings still remained in manuscript, and, in some cases, in a single copy only. They added, "that an uniform and convenient edition of the whole, published under His Majesty's royal sanction, would be an undertaking honourable to His Majesty's reign, and conducive to the advancement of historical and constitutional knowledge; that the House therefore humbly besought His Majesty, that He would be graciously pleased to give such directions as His Majesty, in His wisdom, might think fit, for the publication of a complete edition of the ancient historians of this realm, and assured His Majesty that whatever expense might be necessary for this purpose would be made good."

The Master of the Rolls, being very desirous that effect should be given to the resolution of the House of Commons, submitted to Her Majesty's Treasury in 1857 a plan for the publication of the ancient chronicles and memorials of the United Kingdom, and it was adopted accordingly. In selecting these works, it was considered right, in the first instance, to give preference to those of which the manuscripts were unique, or the materials of which would help to fill up blanks in English history for which no satisfactory and authentic information hitherto existed in any accessible form. One great object the Master of the Rolls had in view was to form a *corpus historicum* within reasonable limits, and which should be as complete as possible.

Of the Chronicles and Memorials, the following volumes have been published. They embrace the period from the earliest time of British history down to the end of the reign of Henry VII.

1. THE CHRONICLE OF ENGLAND, by JOHN CAPGRAVE. Edited by the Rev. F. C. HINGESTON, M.A. 1858.

Capgrave was prior of Lynn, in Norfolk, and provincial of the order of the Friars Hermits of England shortly before the year 1464. His Chronicle extends from the creation of the world to the year 1117. As a record of the language spoken in Norfolk (being written in English), it is of considerable value.

2. CHRONICON MONASTERII DE ABINGDON. Vols. I. and II. Edited by the Rev. JOSEPH STEVENSON, M.A., Vicar of Leighton Buzzard. 1858.

This Chronicle traces the history of the monastery from its foundation by King Ina of Wessex, to the reign of Richard I., shortly after which period the present narrative was drawn up by an inmate of the establishment. The author had access to the title-deeds of the house; and incorporates into his history various charters of the Saxon kings, of great importance as illustrating not only the history of the locality but that of the kingdom.

3. LIVES OF EDWARD THE CONFESSOR. I.—La Estoire de Seint Aedward le Rei II.—Vita Beati Edvardi Regis et Confessoris. III.—Vita Eduuardi Regis qui apud Westmonasterium requiescit. Edited by HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1858.

The first is a poem in Norman French, addressed to Alianor, Queen of Henry III., probably written in 1245. Nothing is known of the author. The second is an anonymous poem, written between 1440 and 1450, by command of Henry VI. It does not throw any new light on the reign of Edward the Confessor, but is valuable as a specimen of the Latin poetry of the time. The third, also by an anonymous author, was apparently written for Queen Edith, between 1066 and 1074. It notices many facts not found in other writers.

4. MONUMENTA FRANCISCANA. Vol. I.—Thomas de Eccleston de Adventu Fratrum Minorum in Angliam. Adæ de Marisco Epistolæ. Registrum Fratrum Minorum Londoniæ. Edited by J. S. BREWER, M.A., Professor of English Literature, King's College, London. Vol. II.—De Adventu

Minorum; re-edited, with additions. Chronicle of the Grey Friars. The ancient English version of the Rule of St. Francis. *Abbreviatio Statutorum*, 1451, &c. *Edited by* RICHARD HOWLETT, Barrister-at-Law. 1858, 1882.

The first volume contains original materials for the history of the settlement of the order of St. Francis in England, the letters of Adam de Marisco, and other papers connected with the foundation and diffusion of this great body. The second volume contains materials found since the first volume was published.

5. *FASCICULI ZIZANIORUM MAGISTRI JOHANNIS WYCLIF CUM TRITICO*. Ascribed to THOMAS NETTER, of WALDEN, Provincial of the Carmelite Order in England, and Confessor to King Henry the Fifth. *Edited by* the Rev. W. W. SHIRLEY, M.A., Tutor and late Fellow of Wadham College, Oxford. 1858.

This work derives its principal value from being the only contemporaneous account of the rise of the Lollards.

6. *THE BUIK OF THE CRONICLIS OF SCOTLAND; OR, A METRICAL VERSION OF THE HISTORY OF HECTOR BOECE*; by WILLIAM STEWART. Vols. I.-III. *Edited by* W. B. TURNBULL, Barrister-at-Law. 1858.

This is a metrical translation of a Latin Prose Chronicle, written in the first half of the 16th century. The narrative begins with the earliest legends and ends with the death of James I. of Scotland, and the "evil ending of the traitor that slew him." Strict accuracy of statement is not to be looked for; but the stories of the colonization of Spain, Ireland, and Scotland are interesting; and the chronicle reflects the manners, sentiments, and character of the age in which it was composed. The peculiarities of the Scottish dialect are well illustrated in this version.

7. *JOHANNIS CAPGRAVE LIBER DE ILLUSTRIBUS HENRICIS*. *Edited by* the Rev. F. C. HINGESTON, M.A. 1858.

This work is dedicated to Henry VI. of England, who appears to have been, in the author's estimation, the greatest of all the Henries. The first part relates only to the history of the Empire from the election of Henry I. the Fowler, to the end of the reign of the Emperor Henry VI. The second part is devoted to English history, from the accession of Henry I. in 1100, to 1448, which was the twenty-fourth year of the reign of Henry VI. The third part contains the lives of illustrious men who have borne the name of Henry in various parts of the world. Capgrave was born in 1398, and lived during the Wars of the Roses, for which period his work is of some value.

8. *HISTORIA MONASTERII S. AUGUSTINI CANTUARIENSIS*, by THOMAS OF ELMHAM, formerly Monk and Treasurer of that Foundation. *Edited by* CHARLES HARDWICK, M.A., Fellow of St. Catharine's Hall, and Christian Advocate in the University of Cambridge. 1858.

This history extends from the arrival of St. Augustine in Kent until 1191. Prefixed is a chronology as far as 1418, which shows in outline what was to have been the character of the work when completed. The author was connected with Norfolk, and most probably with Elmham.

9. *EULOGIUM (HISTORIARUM SIVE TEMPORIS) : Chronicon ab Orbe condito usque ad Annum Domini 1366; a Monacho quodam Malmesbiriensi exaratum*. Vols. I., II., and III. *Edited by* F. S. HAYDON, B.A. 1858-1863.

This is a Latin Chronicle extending from the Creation to the latter part of the reign of Edward III., and written by a monk of the Abbey of Malmesbury, in Wiltshire, about the year 1367. A continuation, carrying the history of England down to the year 1413, was added in the first half of the fifteenth century by an author whose name is not known.

10. *MEMORIALS OF HENRY THE SEVENTH: Bernardi Andreæ Tholosatis Vita Regis Henrici Septimi; necnon alia quedam ad eundem Regem spectantia*. *Edited by* JAMES GARDNER. 1858.

The contents of this volume are—(1) a life of Henry VII., by his poet laureate and historiographer, Bernard André, of Toulouse, with some compositions in verse, of which he is supposed to have been the author; (2) the journals of Roger Machado during certain embassies on which he was sent by Henry VII. to Spain and Brittany, the first of which had reference to the marriage of the King's son, Arthur, with Catharine of Arragon; (3) two curious reports by envoys sent to Spain in 1505 touching the succession to the Crown of Castile, and a project of marriage between Henry VII. and the Queen of Naples; and (4) an account of Philip of Castile's reception in England in 1504. Other documents of interest are given in an appendix.

11. *MEMORIALS OF HENRY THE FIFTH. I.—Vita Henrici Quinti, Roberto Redmanno auctore. II.—Versus Rhythmici in laudem Regis Henrici Quinti. III.—Elmhami Liber Metricus de Henrico V.* *Edited by* CHARLES A. COLE. 1858.

This volume contains three treatises which more or less illustrate the history of the reign of Henry V., viz.: A life by Robert Redman; a Metrical Chronicle by Thomas Elmham, prior of Lenton, a contemporary author; Versus Rhythmici, written apparently by a monk of Westminster Abbey, who was also a contemporary of Henry V.

2. **MUNIMENTA GILDHALLÆ LONDONIENSIS; Liber Albus, Liber Custumarum, et Liber Horn**, in archivis Gildhallæ asservati. Vol. I., Liber Albus. Vol. II. (in Two Parts), Liber Custumarum. Vol. III., Translation of the Anglo-Norman Passages in Liber Albus, Glossaries, Appendices, and Index. Edited by HENRY THOMAS RILEY, M.A., Barrister-at-Law. 1859-1862.

The manuscript of the *Liber Albus*, compiled by John Carpenter, Common Clerk of the City of London in the year 1419, gives an account of the laws, regulations, and institutions of that City in the 12th, 13th, 14th, and early part of the 15th centuries. The *Liber Custumarum* was compiled probably by various hands in the early part of the 14th century during the reign of Edward II. It also gives an account of the laws, regulations, and institutions of the City of London in the 12th, 13th, and early part of the 14th centuries.

13. **CHRONICA JOHANNIS DE OXENEDRES.** Edited by Sir HENRY ELLIS, K.H. 1859.

Although this Chronicle tells of the arrival of Hengist and Horsa in England in 449, yet it substantially begins with the reign of King Alfred, and comes down to 1292, where it ends abruptly. The history is particularly valuable for notices of events in the eastern portions of the Kingdom.

14. **A COLLECTION OF POLITICAL POEMS AND SONGS RELATING TO ENGLISH HISTORY, FROM THE ACCESSION OF EDWARD III. TO THE REIGN OF HENRY VIII.** Vols. I. and II. Edited by THOMAS WRIGHT, M.A. 1859-1861.

These Poems are perhaps the most interesting of all the historical writings of the period, though they cannot be relied on for accuracy of statement. They are various in character; some are upon religious subjects, some may be called satires, and some give no more than a court scandal; but as a whole they present a very fair picture of society, and of the relations of the different classes to one another. The songs in old English are of considerable value to the philologist.

15. **The "OPUS TERTIUM," "OPUS MINUS," &c., of ROGER BACON.** Edited by J. S. BREWER, M.A., Professor of English Literature, King's College, London. 1859.

This is the celebrated treatise—never before printed—so frequently referred to by the great philosopher in his works. It contains the fullest details we possess of the life and labours of Roger Bacon: also a fragment by the same author, supposed to be unique, the "*Compendium Studii Theologici*."

16. **BARTHOLOMÆI DE COTTON, MONACHI NORWICENSIS, HISTORIA ANGLICANA; 449-1298: necnon ejusdem Liber de Archiepiscopis et Episcopis Angliæ.** Edited by HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1859.

The author, a monk of Norwich, has here given us a Chronicle of England from the arrival of the Saxons in 449 to the year 1298, in or about which year it appears that he died. The latter portion of this history is of great value, as the writer was contemporary with the events which he records.

17. **BRUT Y TYWISOGION; or, The Chronicle of the Princes of Wales.** Edited by the Rev. JOHN WILLIAMS AB ITHEL, M.A. 1860.

This work, also known as "*The Chronicle of the Princes of Wales*," has been attributed to Caradoc of Llancarvan, who flourished about the middle of the twelfth century. It is written in the ancient Welsh language, begins with the abdication and death of Cadwalla at Rome, in the year 681, and continues the history down to the subjugation of Wales by Edward I., about the year 1282.

18. **A COLLECTION OF ROYAL AND HISTORICAL LETTERS DURING THE REIGN OF HENRY IV. 1399-1404.** Edited by the Rev. F. C. HINGESTON, M.A., of Exeter College, Oxford. 1860.

19. **THE REPRESSOR OF OVER MUCH BLAMING OF THE CLERGY.** By REGINALD PECOCK, sometime Bishop of Chichester. Vols. I. and II. Edited by the Rev. CHURCHILL BABINGTON, B.D., Fellow of St. John's College, Cambridge. 1860.

The "*Repressor*" may be considered the earliest piece of good theological disquisition of which our English prose literature can boast. The author was born about the end of the fourteenth century, consecrated Bishop of St. Asaph in the year 1444, and translated to the see of Chichester in 1460. While Bishop of St. Asaph, he zealously defended his brother prelates from the attacks of those who censured the bishops for their neglect of duty. Pecock took up a position midway between that of the Roman Church and that of the modern Anglican Church; but his work is interesting chiefly because it gives a full account of the views of the Lollards and of the arguments by which they were supported. Apart from religious matters, the light thrown upon contemporaneous history is very small, but the "*Repressor*" has great value for the philologist.

20. **ANNALES CAMBRIÆ.** *Edited by* the Rev. JOHN WILLIAMS AB ITHEL, M.A. 1860.

These annals, which are in Latin, commence in 447, and come down to 1283. The earlier portion appears to be taken from an Irish Chronicle used by Tigernach, and by the compiler of the Annals of Ulster. The annals were probably written by Blagwryd, Archdeacon of Llandaff.

21. **THE WORKS OF GIRALDUS CAMBRENSIS.** Vols. I.-IV. *Edited by* the Rev. J. S. BREWER, M.A., Professor of English Literature, King's College, London. Vols. V.-VII. *Edited by* the Rev. JAMES F. DIMOCK, M.A., Rector of Barnburgh, Yorkshire. Vol. VIII. *Edited by* GEORGE F. WARNER, M.A., of the Department of MSS., British Museum. 1861-1891.

These volumes contain the historical works of Gerald du Barry, who lived in the reigns of Henry II., Richard I., and John, and attempted to re-establish the independence of Wales by restoring the see of St. Davids to its ancient primacy. His works are of a very miscellaneous nature, both in prose and verse, and are remarkable for the anecdotes which they contain relating to contemporaries. He is the only Welsh writer of any importance who has contributed so much to mediæval literature, or assumed, in consequence of his nationality, so free a tone. His frequent travels in Italy, in France, in Ireland, and in Wales, gave him opportunities for observation which did not generally fall to the lot of writers in the twelfth and thirteenth centuries.

The *Topographia Hibernica* (in Vol. V.) is the result of Giraldus' two visits to Ireland, the first in 1185, the second in 1186-8, when he accompanied Prince John into that country. A very interesting portion of this treatise devoted to the animals of Ireland shows that he was a very accurate and acute observer. The *Expugnatio Hibernica* was written about 1188, and may be regarded rather as a great epic than a sober relation of acts occurring in his own days. Vol. VI. contains the *Itinerarium Cambrie* et *Descriptio Cambrie*; and Vol. VII. the lives of St. Remigius and St. Hugh. Vol. VIII. contains the Treatise "De Principum Instructione," and an index to Vols. I.-IV. and VIII.

22. **LETTERS AND PAPERS ILLUSTRATIVE OF THE WARS OF THE ENGLISH IN FRANCE DURING THE REIGN OF HENRY THE SIXTH, KING OF ENGLAND.** Vol. I., and Vol. II. (in Two Parts). *Edited by* the Rev. JOSEPH STEVENSON, M.A., Vicar of Leighton Buzzard. 1861-1864.

These letters and papers are derived chiefly from originals or contemporary copies extant in the Bibliothèque Impériale, and the Dépôt des Archives, in Paris.

23. **THE ANGLO-SAXON CHRONICLE, ACCORDING TO THE SEVERAL ORIGINAL AUTHORITIES.** Vol. I., Original Texts. Vol. II., Translation. *Edited and translated by* BENJAMIN THORPE, Member of the Royal Academy of Sciences at Munich, and of the Society of Netherlandish Literature at Leyden. 1861.

This chronicle, extending from the earliest history of Britain to 1154, is justly the boast of England; no other nation can produce any history, written in its own vernacular, at all approaching it, in antiquity, truthfulness, or extent, the historical books of the Bible alone excepted. There are at present six independent manuscripts of the Saxon Chronicle, ending in different years, and written in different parts of the country. In this edition, the text of each manuscript is printed in columns on the same page, so that the student may see at a glance the various changes which occur in orthography, whether arising from locality or age.

24. **LETTERS AND PAPERS ILLUSTRATIVE OF THE REIGNS OF RICHARD III. AND HENRY VII.** Vols. I. and II. *Edited by* JAMES GARDNER. 1861-1863.

The papers are derived from the MSS. in Public Record Office, the British Museum, and other repositories. The period to which they refer is unusually destitute of chronicles and other sources of historical information, so that the light obtained from them is of special importance. The principal contents of the volumes are some diplomatic Papers of Richard III.; correspondence between Henry VII. and Ferdinand and Isabella of Spain; documents relating to Edmund de la Pole Earl of Suffolk; and a portion of the correspondence of James IV. of Scotland.

25. **LETTERS OF BISHOP GROSSETESTE.** *Edited by* the Rev. HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1861.

The Letters of Robert Grosseteste range in date from about 1210 to 1263, and relate to various matters connected not only with the political history of England during the reign of Henry III. but with its ecclesiastical condition. They refer especially to the diocese of Lincoln, of which Grosseteste was bishop.

26. **DESCRIPTIVE CATALOGUE OF MANUSCRIPTS RELATING TO THE HISTORY OF GREAT BRITAIN AND IRELAND.** Vol. I. (in Two Parts); Anterior to the Norman Invasion. Vol. II.; 1066-1200. Vol. III.; 1200-1327. *By* Sir THOMAS DUFFUS HARDY, D.C.L., Deputy Keeper of the Records. 1862-1871.

The object of this work is to publish notices of all known sources of British history, both printed and unprinted, in one continued sequence. The materials, when historical (as distinguished from biographical), are arranged under the year in which the latest event is recorded in the chronicle or history, and not under the period in which its author, real or supposed, flourished. Biographies are enumerated under the year in which the person commemorated died, and not under the year in which the life was written. A brief analysis of each work has been added when deserving it, in which original portions are distinguished from mere compilations. A biographical sketch of the author of each piece has been added, and a brief notice of such British authors as have written on historical subjects.



27. **ROYAL AND OTHER HISTORICAL LETTERS ILLUSTRATIVE OF THE REIGN OF HENRY III.** Vol. I., 1216-1235. Vol. II., 1236-1272. *Selected and edited by the Rev. W. W. SHIRLEY, D.D., Regius Professor of Ecclesiastical History, and Canon of Christ Church, Oxford. 1862-1866.*

The letters contained in these volumes are derived chiefly from the ancient correspondence in the Public Record Office. They illustrate the political history of England during the growth of its liberties, and throw considerable light upon the personal history of Simon de Montfort. The affairs of France form the subject of many of them, especially in regard to the province of Gascony.

28. **CHRONICA MONASTERII S. ALBANI.**—1. THOMÆ WALSHINGHAM HISTORIA ANGLICANA; Vol. I., 1272-1381: Vol. II., 1381-1422. 2. WILLELMI RISHANGER CHRONICA ET ANNALES, 1259-1307. 3. JOHANNIS DE TROKELowe ET HENRICI DE BLANEFORDE CHRONICA ET ANNALES, 1259-1296; 1307-1324; 1392-1406. 4. GESTA ABBATUM MONASTERII S. ALBANI, a THOMÆ WALSHINGHAM, REGNANTE RICARDO SECUNDO, EJUDEM ECCLESIE PRÆCENTORE, COMPILATA; Vol. I., 793-1290: Vol. II., 1290-1349: Vol. III., 1349-1411. 5. JOHANNIS AMUNDESHAM, MONACHI MONASTERII S. ALBANI, UT VIDETUR, ANNALES; Vols. I. and II. 6. REGISTRA QUORUNDAM ABBATUM MONASTERII S. ALBANI, QUI SÆCULO XV<sup>mo</sup> FLORUER; Vol. I., REGISTRUM ABBATIS JOHANNIS WHETHAMSTEDE, ABBATIS MONASTERII SANCTI ALBANI, ITERUM SUSCEPTI; ROBERTO BLAKENEY, CAPELLANO, QUONDAM ADSSCRIPTUM: Vol. II., REGISTRA JOHANNIS WHETHAMSTEDE, WILLELMI ALBON, ET WILLELMI WALINGFORDE, ABBATUM MONASTERII SANCTI ALBANI, CUM APPENDICE, CONTINENTE QUASDAM EPISTOLAS, a JOHANNIS WHETHAMSTEDE CONSCRIPTAS. 7. YPODIGNA NEUSTILÆ a THOMÆ WALSHINGHAM, QUONDAM MONACHO MONASTERII S. ALBANI, CONSCRIPTUM. *Edited by HENRY THOMAS RILEY, Esq., M.A., Barrister-at-Law. 1863-1876.*

In the first two volumes is a History of England, from the death of Henry III. to the death of Henry V., by Thomas Walsingham, Precentor of St. Albans.

In the 3rd volume is a Chronicle of English History, attributed to William Rishanger, who lived in the reign of Edward I.: an account of transactions attending the award of the kingdom of Scotland to John Balliol, 1291-1292, also attributed to William Rishanger, but on no sufficient ground: a short Chronicle of English History, 1292 to 1300, by an unknown hand: a short Chronicle of Willelmi Rishanger Gesta Edwardi Primi, Regis Angliæ, with Annals Regum Angliæ, probably by the same hand: and fragments of three Chronicles of English History, 1285 to 1307.

In the 4th volume is a Chronicle of English History, 1299 to 1299: Annals of Edward II., 1307 to 1323, by John de Trokelowe, a monk of St. Albans, and a continuation of Trokelowe's Annals, 1323, 1324, by Henry de Blanford: a full Chronicle of English History, 1392 to 1406; and an account of the Benefactors of St. Albans, written in the early part of the 15th century.

The 5th, 6th, and 7th volumes contain a history of the Abbots of St. Albans, 793 to 1411, mainly compiled by Thomas Walsingham: with a Continuation.

The 8th and 9th volumes, in continuation of the Annals, contain a Chronicle, probably by John Amundesham, a monk of St. Albans.

The 10th and 11th volumes relate especially to the acts and proceedings of Abbots Whethamstede, Albon, and Walingford, and may be considered as a memorial of the chief historical and domestic events during those periods.

The 12th volume contains a compendious History of England to the reign of Henry V., and of Normandy in early times, also by Thomas Walsingham, and dedicated to Henry V.

29. **CHRONICON ABBATIS EYESHAMENSIS, AUCTORIBUS DOMINICO PRIORE EYESHAMIS ET THOMÆ DE MARLEBERGE ABBATE, a FUNDATIONE AD ANNUM 1213, UNA CUM CONTINUATIONE AD ANNUM 1418.** *Edited by the Rev. W. D. MACRAY, Bodleian Library, Oxford. 1863.*

The Chronicle of Evesham illustrates the history of that important monastery from its foundation by Egwin, about 690, to the year 1418. Its chief feature is an autobiography, which makes us acquainted with the inner daily life of a great abbey, such as but rarely has been recorded. Interspersed are many notices of general, personal, and local history.

30. **RICARDI DE CIRENCESTRIA SPECULUM HISTORIALE DE GESTIS REGUM ANGLIÆ.** Vol. I., 447-871. Vol. II., 872-1066. *Edited by JOHN E. B. MAYOR, M.A., Fellow of St. John's College, Cambridge. 1863-1869.*

Richard of Cirencester was a monk of Westminster, 1335-1400. His history, in four books, extends from 447 to 1066. He announces his intention of continuing it, but there is no evidence that he completed any more. This chronicle gives many charters in favour of Westminster Abbey, and a very full account of the lives and miracles of the saints, especially of Edward the Confessor, whose reign occupies the fourth book. A treatise on the Coronation, by William of Audbury, a monk of Westminster fills book ii. c. 3. It was on this author that C. J. Bertram fathered his forgery, *De Sibus Britannis* in 1747.

31. **YEAR BOOKS OF THE REIGN OF EDWARD THE FIRST.** Years 20-21, 21-22, 30-31, 32-33, and 33-35 Edw. I.; and 11-12 Edw. III. *Edited and translated by ALFRED JOHN HOEWOOD, Barrister-at-Law. Years 12-13, 13-14, 14, and 14-15 Edward III. Edited and translated by LUKE OWEN PIKE, M.A., Barrister-at-Law. 1863-1889.*

The "Year Books" are the earliest of our Law Reports. They contain matter not only of practical utility to lawyers in the present day, but also illustrative of almost every branch of history, while for certain philological purposes they hold a position absolutely unique.

32. *NARRATIVES OF THE EXPULSION OF THE ENGLISH FROM NORMANDY 1449-1450.* —Robertus Blondelli de Reductione Normanniæ: Le Recouvrement de Normendie, par Berry, Hérault du Roy: Conférences between the Ambassadors of France and England. *Edited by the Rev. JOSEPH STEVENSON, M.A.* 1863.

This volume contains the narrative of an eye-witness who details with considerable power and minuteness the circumstances which attended the final expulsion of the English from Normandy in 1460.

33. *HISTORIA ET CARTULARIUM MONASTERII S. PETRI GLOUCESTRIÆ.* Vols. I., II., and III. *Edited by W. H. HART, F.S.A., Membre correspondant de la Société des Antiquaires de Normandie.* 1863-1867.

This work consists of two parts, the History and the Cartulary of the Monastery of St. Peter, Gloucester. The history furnishes an account of the monastery from its foundation, in the year 681, to the early part of the reign of Richard II., together with a calendar of donations and benefactions. It treats principally of the affairs of the monastery, but occasionally matters of general history are introduced. Its authorship has generally been assigned to Walter Froucester the twentieth abbot, but without any foundation.

34. *ALEXANDRI NECKAM DE NATURIS RERUM LIBRI DUO; with NECKAM'S POEM, DE LAUDIBUS DIVINÆ SAPIENTIÆ.* *Edited by THOMAS WRIGHT, M.A.* 1863.

Neckam was a man who devoted himself to science, such as it was in the twelfth century. In the "De Naturis Rerum" are to be found what may be called the rudiments of many sciences mixed up with much error and ignorance. Neckam had his own views in morals, and in giving us a glimpse of them, as well as of his other opinions, he throws much light upon the manners, customs, and general tone of thought prevalent in the twelfth century. The poem entitled "De Laudibus Divinæ Sapientiæ" appears to be a metrical paraphrase or abridgment of the "De Naturis Rerum." It is written in the elegiac metre, and it is, as a whole, above the ordinary standard of mediæval Latin.

35. *LEECHDOMS, WORTCUNNING, AND STARCRAFT OF EARLY ENGLAND; being a Collection of Documents illustrating the History of Science in this Country before the Norman Conquest.* Vols. I., II., and III. *Collected and edited by the Rev. T. OSWALD COCKAYNE, M.A.* 1864-1866.

This work illustrates not only the history of science, but the history of superstition. In addition to the information bearing directly upon the medical skill and medical faith of the times, there are many passages which incidentally throw light upon the general mode of life and ordinary diet.

36. *ANNALES MONASTICI.* Vol. I.:—*Annales de Margan, 1066-1232; Annales de Theokesberia, 1066-1263; Annales de Burton, 1004-1263.* Vol. II.:—*Annales Monasterii de Wintonia, 519-1277; Annales Monasterii de Waverleia, 1-1291.* Vol. III.:—*Annales Prioratus de Dunstaplia, 1-1297.* *Annales Monasterii de Bermundeseia, 1042-1432.* Vol. IV.:—*Annales Monasterii de Oseneia, 1016-1347; Chronicon vulgo dictum Chronicon Thomæ Wykes, 1066-1289; Annales Prioratus de Wigornia, 1-1377.* Vol. V.:—*Index and Glossary.* *Edited by HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, and Registry of the University, Cambridge.* 1864-1869.

The present collection of Monastic Annals embraces all the more important chronicles compiled in religious houses in England during the thirteenth century. These distinct works are ten in number. The extreme period which they embrace ranges from the year 1 to 1432, although they refer more especially to the reigns of John, Henry III., and Edward I.

37. *MAGNA VITA S. HUGONIS EPISCOPI LINCOLNIENSIS.* *Edited by the Rev. JAMES F. DIMOCK, M.A., Rector of Barnburgh, Yorkshire.* 1864.

This work contains a number of very curious and interesting incidents, and is valuable, not only as a biography of a celebrated ecclesiastic but as the work of a man, who, from personal knowledge, gives notices of passing events, as well as of individuals who were then taking active part in public affairs. The author, in all probability, was Adam Abbot of Evesham, domestic chaplain and private confessor of Bishop Hugh. Bishop Hugh's consecration took place on the 21st September 1186; he died on the 16th of November 1200; and was canonized in 1220.

38. *CHRONICLES AND MEMORIALS OF THE REIGN OF RICHARD THE FIRST.* Vol. I.:—*ITINERARIUM PEREGRINORUM ET GESTA REGIS RICARDI.* Vol. II.:—*EPISTOLÆ CANTUARIENSIS; the Letters of the Prior and Convent of Christ Church, Canterbury; 1187 to 1199.* *Edited by the Rev. WILLIAM STUBBS, M.A., Vicar of Navestock, Essex, and Lambeth Librarian.* 1864-1865.

The authorship of the Chronicle in Vol. I., hitherto ascribed to Geoffrey Vinesauf, is now more correctly ascribed to Richard, Canon of the Holy Trinity of London. The narrative extends from 1187 to 1199; but its chief interest consists in the minute and authentic narrative which it furnishes of the exploits of Richard I., from his departure from England in December 1189 to his death in 1199.

The letters in Vol. II., written between 1187 and 1199, are of value as furnishing authentic materials for the history of the ecclesiastical condition of England during the reign of Richard I. They had their origin in a dispute which arose from the attempts of Baldwin and Hubert, archbishops of Canterbury, to found a college of secular canons, a project which gave great umbrage to the monks of Canterbury.

39. *RECUEIL DES CHRONIQUES ET ANCIENNES HISTOIRES DE LA GRANT BRETAGNEA PRESENT NOME ENGLETERRE*, par JEHAN DE WAURIN. Vol. I. Albina to 688. Vol. II., 1399-1422. Vol. III., 1422-1431. *Edited by WILLIAM HARDY, F.S.A.* 1884-1879. Vol. IV., 1431-1443. Vol. V., 1443-1471. *Edited by Sir WILLIAM HARDY, F.S.A., and EDWARD L. C. P. HARDY, F.S.A.* 1884-1891.
40. *A COLLECTION OF THE CHRONICLES AND ANCIENT HISTORIES OF GREAT BRITAIN, NOW CALLED ENGLAND*, by JOHN DE WAURIN. Vol. I. Albina to 688. Vol. II., 1399-1422. Vol. III., 1422-1431. (Translations of the preceding Vols. I., II., and III.) *Edited and translated by Sir WILLIAM HARDY, F.S.A., and EDWARD L. C. P. HARDY, F.S.A.* 1864-1887.

This curious chronicle extends from the fabulous period of history down to the return of Edward IV. to England in the year 1471 after the second deposition of Henry VI. The manuscript from which the text of the work is taken was written towards the end of the fifteenth century, having been expressly executed for Louis de Bruges, Seigneur de la Gruthuyse and Earl of Winchester.

41. *POLYCHRONICON RANULPHI HIGDEN*, with Trevisa's Translation. Vols. I. and II. *Edited by CHURCHILL BABINGTON, B.D.*, Senior Fellow of St. John's College, Cambridge. Vols. III.-IX. *Edited by the Rev. JOSEPH RAWSON LUMBY, D.D.*, Norrisian Professor of Divinity, Vicar of St. Edward's, Fellow of St. Catharine's College, and late Fellow of Magdalene College, Cambridge. 1865-1886.

This is one of the many mediæval chronicles which assume the character of a history of the world. It begins with the creation, and is brought down to the author's own time, the reign of Edward III. It enables us to form a very fair estimate of the knowledge of history and geography which well-informed readers of the fourteenth and fifteenth centuries possessed, for it was then the standard work on general history.

The two English translations, which are printed with the original Latin, afford interesting illustrations of the gradual change of our language, for one was made in the fourteenth century, the other in the fifteenth.

42. *LE LIVRE DE REIS DE BRITTANIE E LE LIVRE DE REIS DE ENGLETERRE*. *Edited by the Rev. JOHN GLOVER, M.A.*, Vicar of Brading, Isle of Wight, formerly Librarian of Trinity College, Cambridge. 1865.

These two treatises, though they cannot rank as independent narratives, are valuable as careful abstracts of previous historians. Some various readings are given which are interesting to the philologist as instances of semi-Saxonized French.

43. *CHRONICA MONASTERII DE MELSA AB ANNO 1150 USQUE AD ANNUM 1406*. Vols. I.-III. *Edited by EDWARD AUGUSTUS BOND*, Assistant-Keeper of Manuscripts, and Egerton Librarian, British Museum. 1866-1868.

The Abbey of Meaux was a Cistercian house, and the work of its abbot is both curious and valuable. It is a faithful and often minute record of the establishment of a religious community, of its progress in forming an ample revenue, of its struggles to maintain its acquisitions, and of its relations to the governing institutions of the country. In addition to the private affairs of the monastery, some light is thrown upon the public events of the time.

44. *MATTHEI PARISIENSIS HISTORIA ANGLORUM, SIVE, UT VULGO DICTUR, HISTORIA MINOR*. Vols. I.-III. 1067-1253. *Edited by Sir FREDERIC MADDEN, K.H.*, Keeper of the Manuscript Department of British Museum. 1866-1869.

The exact date at which this work was written is, according to the chronicler, 1280. The history is of considerable value as an illustration of the period during which the author lived, and contains a good summary of the events which followed the Conquest.

45. *LIBER MONASTERII DE HYDA: A CHRONICLE AND CHARTULARY OF HYDE ABBEY, WINCHESTER, 455-1023*. *Edited by EDWARD EDWARDS*. 1866.

The "Book of Hyde" is a compilation from much earlier sources which are usually indicated with considerable care and precision. In many cases, however, the Hyde Chronicler appears to correct, to qualify, or to amplify the statements, which, in substance, he adopts. He also mentions, and frequently quotes from writers whose works are either entirely lost or at present known only by fragments.

There is to be found, in the "Book of Hyde," much information relating to the reign of King Alfred which is not known to exist elsewhere. The volume contains some curious specimens of Anglo-Saxon and mediæval English.

46. **CHRONICON SCOTORUM: A CHRONICLE OF IRISH AFFAIRS**, from the earliest times to 1135; and **SUPPLEMENT**, containing the Events from 1141 to 1150. *Edited, with Translation, by WILLIAM MAUNSELL HENNESSY, M.R.I.A.* 1866.

There is, in this volume, a legendary account of the peopling of Ireland and of the adventures which befell the various heroes who are said to have been connected with Irish history. The details are, however, very meagre both for this period and for the time when history becomes more authentic. The plan adopted in the chronicle gives the appearance of an accuracy to which the earlier portions of the work cannot have any claim. The succession of events is marked year by year, from A.M. 1599 to A.D. 1150.

47. **THE CHRONICLE OF PIERRE DE LANGTOFT, IN FRENCH VERSE, FROM THE EARLIEST PERIOD TO THE DEATH OF EDWARD I.** Vols. I. and II. *Edited by THOMAS WRIGHT, M.A.* 1866-1868.

It is probable that Pierre de Langtoft was a canon of Bridlington, in Yorkshire, and lived in the reign of Edward I., and during a portion of the reign of Edward II. This chronicle is divided into three parts; in the first, is an abridgment of Geoffrey of Monmouth's "Historia Britonum"; in the second, a history of the Anglo-Saxon and Norman kings, to the death of Henry III.; in the third, a history of the reign of Edward I. The language is singularly corrupt, and a curious specimen of the French of Yorkshire.

48. **THE WAR OF THE GARDHIL WITH THE GAILL, OR THE INVASIONS OF IRELAND BY THE DANES AND OTHER NORSEMEN.** *Edited, with a Translation, by the Rev. JAMES HENTHORN TODD, D.D., Senior Fellow of Trinity College, and Regius Professor of Hebrew in the University of Dublin.* 1867.

The work in its present form, in the editor's opinion, is a comparatively modern version of an ancient original. That it was compiled from contemporary materials has been proved by curious incidental evidence. The story is told after the manner of the Scandinavian Sagas, with poems and fragments of poems introduced into the prose narrative.

49. **GESTA REGIS HENRICI SECUNDI BENEDICTI ABBATIS. CHRONICLE OF THE REIGNS OF HENRY II. AND RICHARD I., 1169-1192, known under the name of BENEDICT OF PETERBOROUGH.** Vols. I. and II. *Edited by the Rev. WILLIAM STUBBS, M.A., Regius Professor of Modern History, Oxford, and Lambeth Librarian.* 1867.

This chronicle of the reigns of Henry II. and Richard I., known commonly under the name of Benedict of Peterborough, is one of the best existing specimens of a class of historical compositions of the first importance to the student.

50. **MUNIMENTA ACADEMICA, OR, DOCUMENTS ILLUSTRATIVE OF ACADEMICAL LIFE AND STUDIES AT OXFORD (in Two Parts).** *Edited by the Rev. HENRY ANSTEE, M.A., Vicar of St. Wendron, Cornwall, and lately Vice-Principal of St. Mary Hall, Oxford.* 1868.

51. **CHRONICA MAGISTRI ROGERI DE HOVEDENE.** Vols. I., II., III., and IV. *Edited by the Rev. WILLIAM STUBBS, M.A., Regius Professor of Modern History, and Fellow of Oriel College, Oxford.* 1868-1871.

The earlier portion, extending from 732 to 1148, appears to be a copy of a compilation made in Northumbria about 1161, to which Hoveden added little. From 1148 to 1169—a very valuable portion of this work—the matter is derived from another source, to which Hoveden appears to have supplied little, and not always judiciously. From 1170 to 1192 is the portion which corresponds with the Chronicle known under the name of Benedict of Peterborough (see No. 49); but it is not a copy, being sometimes an abridgment, at others a paraphrase; occasionally the two works entirely agree; showing that both writers had access to the same materials, but dealt with them differently. From 1192 to 1201 may be said to be wholly Hoveden's work; it is extremely valuable, and an authority of the first importance.

52. **WILLELMI MALMESBIRIENSIS MONACHI DE GESTIS PONTIFICUM ANGLORUM LIBRI QUINQUE.** *Edited by N. E. S. A. HAMILTON, of the Department of Manuscripts, British Museum.* 1870.

William of Malmesbury's "Gesta Pontificum" is the principal foundation of English Ecclesiastical Biography, down to the year 1121.

53. **HISTORIC AND MUNICIPAL DOCUMENTS OF IRELAND, FROM THE ARCHIVES OF THE CITY OF DUBLIN, &c. 1172-1320.** *Edited by JOHN T. GILBERT, F.S.A., Secretary of the Public Record Office of Ireland.* 1870.

A collection of original documents, elucidating mainly the history and condition of the municipal, middle, and trading classes under or in relation with the rule of England in Ireland. Extending over the first hundred and fifty years of the Anglo-Norman settlement, the series includes charters, municipal laws and regulations, rolls of names of citizens and members of merchant-guilds, lists of commodities with their rates, correspondence, illustrations of relations between ecclesiastics and laity; together with many documents exhibiting the state of Ireland during the presence there of the Scots under Robert and Edward Bruce.

54. **THE ANNALS OF LOCH CÉ. A CHRONICLE OF IRISH AFFAIRS, FROM 1041 TO 1590.** Vols. I and II. *Edited, with a Translation, by WILLIAM MAUNSELL HENNESSY, M.R.I.A.* 1871.

The original of this chronicle has passed under various names. The title of "Annals of Loch Cé" was given to it by Professor O'Curry, on the ground that it was transcribed for Brian Mac Dermot, an Irish chieftain, who resided on the island in Loch Cé, in the county of Roscommon. It adds much to the materials for the civil and ecclesiastical history of Ireland; and contains many curious references to English and foreign affairs, not noticed in any other chronicle.

55. **MONUMENTA JURIDICA. THE BLACK BOOK OF THE ADMIRALTY, WITH APPENDICES,** Vols. I.-IV. *Edited by SIR TRAVERS TWISS, Q.C., D.C.L.* 1871-1876.

This book contains the ancient ordinances and laws relating to the navy, and was probably compiled for the use of the Lord High Admiral of England. Selden calls it the "jewel of the Admiralty Records." Prynne ascribes to the Black Book the same authority in the Admiralty as the Black and Red Books have in the Court of Exchequer, and most English writers on maritime law recognise its importance.

56. **MEMORIALS OF THE REIGN OF HENRY VI.:—OFFICIAL CORRESPONDENCE OF THOMAS BECKYNTON, SECRETARY TO HENRY VI., AND BISHOP OF BATH AND WELLS.** *Edited by the Rev. GEORGE WILLIAMS, B.D., Vicar of Ringwood, late Fellow of King's College, Cambridge.* Vols. I. and II. 1872.

These curious volumes are of a miscellaneous character, and were probably compiled under the immediate direction of Beckynton before he had attained to the Episcopate. They contain many of the Bishop's own letters, and several written by him in the King's name; also letters to himself while Royal Secretary, and others addressed to the King.

57. **MATTHÆI PARISIENSIS, MONACHI SANCTI ALBANI, CHRONICA MAJORA.** Vol. I. The Creation to A.D. 1066. Vol. II. A.D. 1067 to A.D. 1216. Vol. III. A.D. 1216 to A.D. 1239. Vol. IV. A.D. 1240 to A.D. 1247. Vol. V. A.D. 1248 to A.D. 1259. Vol. VI. Additamenta. Vol. VII. Index. *Edited by the Rev. HENRY RICHARDS LUARD, D.D., Fellow of Trinity College, Registrar of the University, and Vicar of Great St. Mary's, Cambridge.* 1872-1884.

This work contains the "Chronica Majora" of Matthew Paris, one of the most valuable and frequently consulted of the ancient English Chronicles. It is published from its commencement, for the first time.

58. **MEMORIALE FRATRIS WALTERI DE COVENTRIA.—THE HISTORICAL COLLECTIONS OF WALTER OF COVENTRY.** Vols. I. and II. *Edited by the Rev. WILLIAM STUBBS, M.A., Regius Professor of Modern History, and Fellow of Oriel College, Oxford.* 1872-1873.

The first portion is not of much importance, being only a compilation from earlier writers. The part relating to the first quarter of the thirteenth century is the most valuable and interesting.

59. **THE ANGLO-LATIN SATIRICAL POETS AND EPIGRAMMATISTS OF THE TWELFTH CENTURY.** Vols. I. and II. *Collected and edited by THOMAS WRIGHT, M.A., Corresponding Member of the National Institute of France (Académie des Inscriptions et Belles-Lettres).* 1872.

The Poems contained in these volumes have long been known and appreciated as the best satires of the age in which their authors flourished, and were deservedly popular during the 13th and 14th centuries.

60. **MATERIALS FOR A HISTORY OF THE REIGN OF HENRY VII., FROM ORIGINAL DOCUMENTS PRESERVED IN THE PUBLIC RECORD OFFICE.** Vols. I. and II. *Edited by the Rev. WILLIAM CAMPBELL, M.A., one of Her Majesty's Inspectors of Schools.* 1873-1877.

61. **HISTORICAL PAPERS AND LETTERS FROM THE NORTHERN REGISTERS.** *Edited by the Rev. JAMES RAINES, M.A., Canon of York, and Secretary of the Surtees Society.* 1873.

The documents in this volume illustrate, for the most part, the general history of the north of England, particularly in its relation to Scotland.

62. **REGISTRUM PALATINUM DUNELMENSE. THE REGISTER OF RICHARD DE KELLAWE, LORD PALATINE AND BISHOP OF DURHAM; 1311-1316.** Vols. I.-IV. *Edited by Sir THOMAS DUFFUS HARDY, D.C.L., Deputy Keeper of the Records.* 1873-1878.

Bishop Kellawe's Register contains the proceedings of his prelate, both lay and ecclesiastical, and is the earliest Register of the Palatinate of Durham.

63. **MEMORIALS OF SAINT DUNSTAN, ARCHBISHOP OF CANTERBURY.** *Edited by the Rev. WILLIAM STUBBS, M.A., Regius Professor of Modern History, and Fellow of Oriel College, Oxford.* 1874.
64. **CHRONICON ANGLIÆ, AB ANNO DOMINI 1328 USQUE AD ANNUM 1388, AUCTORE MONACHO QUODAM SANCTI ALBANI.** *Edited by EDWARD MAUNDE THOMPSON, Barrister-at-Law, Assistant-Keeper of the Manuscripts in the British Museum.* 1874.
65. **THÓMAS SAGA ERKIBYSKUPS. A LIFE OF ARCHBISHOP THOMAS BECKET, IN ICELANDIC. Vols. I. and II.** *Edited, with English Translation, Notes, and Glossary by M. EIRIKR MAGNÚSSON, M.A., Sub-Librarian of the University Library, Cambridge.* 1875-1884.
- This work is derived from the Life of Becket written by Benedict of Peterborough, and apparently supplies the missing portions in Benedict's biography.
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| 1878  | 39                | Calendar of Recognizance Rolls of the Palatinate of Chester, 1 Hen. VIII.—11 Geo. IV. — Exchequer Records, Calendar of Depositions taken by Commission, Charles I.—Duchy of Lancaster Records; Calendar of Lancashire Inquisitions post Mortem, &c.—Third Supplementary Report on the Shaftesbury Papers.—Anglo-Saxon Charters photostencographed.—List of Despatches of French Ambassadors to England, 1509-1714. | [C. 2123]       | 4 6          |

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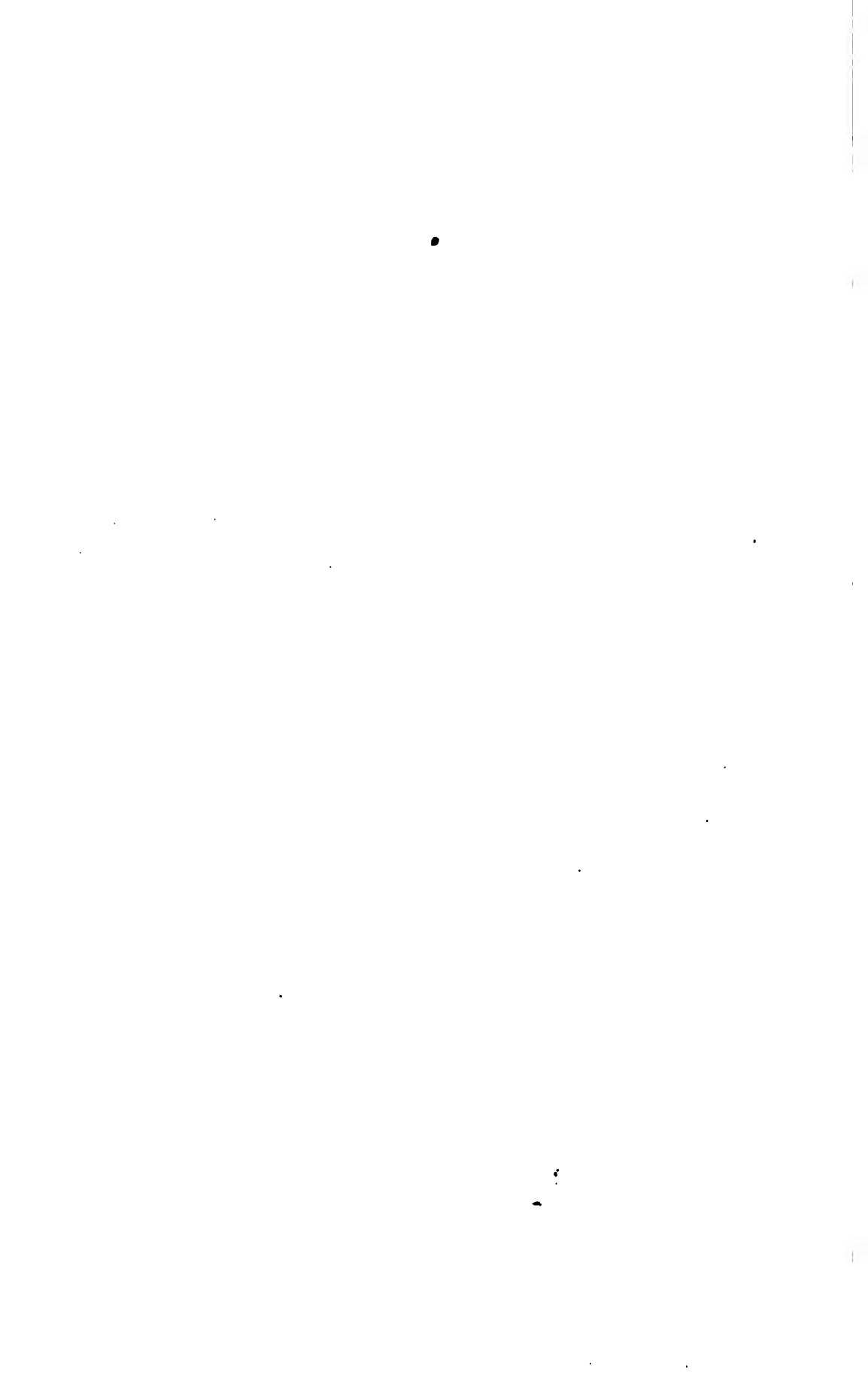
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